TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 238.

CITIZENS' SAVINGS AND TRUST COMPANY, APPELLANT,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY, AND ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS.

FILED MARCH 26, 1906.

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1 In the Circuit Court of the United States for the Eastern District of Illinois.

CITIZENS' SAVINGS AND TRUST COMPANY, Complainant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY, and THE ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY and THE UNITED STATES TRUST COMPANY OF NEW YORK, Defendants.

Stewart, Eliot & Williams, solicitors for complainant.
John W. Dickinson, Blewett Lee and John G. Drennan, counsel for the defendants.

Pleas in the Circuit Court of the United States for the Eastern District of Illinois, in chancer- sitting, at the United States Court Room, in the City of Danville, in said district, before the Honorable Francis M. Wright, District Judge for the United States for the Eastern District of Illinois, on the 24th day of August, in the year of our Lord one thousand nine hundred and five, and of our independence the one hundred and thirtieth year.

Be it remembered that on this day, to-wit: the twenty fourth day of August, 1905, came the Citizens' Savings and Trust Company, the Complainant in the above entitled cause, by its solicitors, Stewart, Eliot & Williams, and by leave of Court first had and obtained filed in the clerk's office of said court its certain bill of complaint which is in the words and figures following, to-wit:

2 In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

THE CITIZENS' SAVINGS & TRUST COMPANY, Complainant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE & SOUTHERN ILLINOIS RAILROAD COMPANY, THE ST. LOUIS, ALTON & TERRE HAUTE RAILROAD COMPANY, and THE UNITED STATES TRUST COMPANY OF NEW YORK, Defendants.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Illinois:

Your orator, the Citizens' Savings and Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio and a citizen of said State, brings this its bill of complaint against the Illinois Central Railroad Company, The Belleville & Southern Illinois Railroad Company, hereinafter called the "Belleville Company," the St. Louis, Alton & Terre Haute Railroad Company, hereinafter called the "Terre Haute Company," corpora-

tions organized and existing under and by virtue of the laws of the State of Illinois and citizens of said State of Illinois, and the United States Trust Company, of New York, a corporation organized and existing under and by virtue of the laws of the State of New York and a citizen of said State of New York.

And thereupon your orator complains and says:

I.

That on or about the 5th day of December, 1870, the defendant the Belleville Company, which was then and still is a railroad corporation organized and existing under the laws of the State of Illinois, and having power and authority to sell and issue its
3 capital stock, and to take and receive subscriptions thereto, on such terms as it might deem for its interest, from any county, city, town, or village in said State, did sell, issue and deliver to Perry County, in the State of Illinois, one thousand shares of its capital stock, each share of the par value of one hundred dollars ($100.) and aggregating one hundred thousand dollars ($100,000) par value, at and for the price of and in exchange for one hundred bonds of said Perry County, aggregating one hundred thousand dollars ($100,000), each of said bonds bearing date January 1, 1871, and being each for the sum of one thousand dollars ($1,000), payable to said Belleville Company, or bearer, twenty years after said date, with interest at the rate of seven per cent. per annum represented by coupons thereto attached; which said one hundred bonds were on or about said 5th day of December, 1870, accepted and received by said Belleville Company from said Perry County, in full payment for said one thousand shares of stock. Thereafter, and during the year 1871, the said Belleville Company sold, assigned, transferred and delivered all said bonds for their full value to sundry persons, firms and corporations, from whom said Belleville Company then accepted and received in money the full value of all said bonds, and to which said persons, firms and corporations said Belleville Company then assigned transferred and set over all its right title, interest and claims whatsoever in said bonds or in connection therewith or in reference thereto. That your orator in said year 1871 purchased for full value forty of said bonds, each for the sum of one thousand dollars ($1000) and aggregating the par value of forty thousand dollars ($40,000), in good faith and without knowledge or notice of any infirmity therein.

II.

Your orator further states that the issue and delivery to the said Belleville Company of said bonds of said Perry County in exchange for said stock, had, before said 5th day of December, 1870, been authorized by vote of the electors of said Perry County, but upon condition that the Belleville Company should locate its ma-
4 chine shops at Du Quoin, in said County, and that the said Belleville Company procured said bonds to be so issued and delivered to it by said County upon the pretense that it had so located, or would so locate its machine shops; whereas in truth and in

fact, it had not then so located them, nor did it ever so locate them. The condition aforesaid and non-performance thereof were known to said Belleville Company, but were fraudulently concealed by it, and your orator had no knowledge or notice thereof when it purchases said forty bonds as aforesaid, nor for many years thereafter, to-wit: until the year 1890.

III.

From the said 5th day of September, 1870, down to the year 1887, said Perry County treated its said bonds as lawful and valid obligations and paid interest thereon. In the year 1890 in a certain suit brought in the United States Circuit Court for the Southern District of Illinois by your orator against said Perry County, in which your orator sought to recover judgment against said County upon unpaid and then past due coupons for interest upon said forty bonds, acquired and held by your orator as aforesaid, it was adjudged by said Court that said bonds were invalid and not binding upon said Perry County because of the failure of the said Belleville Company to locate its machine shops at Du Quoin, as by vote of the electors of said County, authorizing said issue of said bonds, it had been required to do.

Subsequently the said Belleville Company procured one Stebbins to become the holder of ten shares of its capital stock for the purpose of bringing a suit against said Perry County, with the object of having cancelled the certificates for the said one thousand shares of stock of the said Belleville Company, acquired and held by said Perry County as aforesaid.

Thereupon said Stebbins, colluding with the said Belleville Company as aforesaid, brought suit in the Circuit Court of Perry County, Illinois, against said Perry County, and against said Belleville Company, in which suit a decree was entered ordering that the said certificates for said one thousand shares held by Perry County as aforesaid be cancelled and delivered up to said Belleville Company.

In obedience to said decree of said Circuit Court of Perry County, on or about the 25th day of October, 1897, said County delivered up said certificates for said one thousand shares of capital stock in said Belleville Company, and said certificates were on said day cancelled by the Clerk of said Circuit Court of Perry County, and being so cancelled were returned to the said Belleville Company.

IV.

Subsequently, upon the 15th day of April, 1898, your orator brought suit in the United States Circuit Court for the Southern District of Illinois against the said Belleville Company, on its own behalf and on behalf of all other holders of any of said one hundred void bonds of said Perry County who might choose to intervene. In said suit your orator prayed that said Belleville Company might be declared a trustee for your orator, and to hold forty thousand dollars ($40,000) par value of its capital stock to the use and for

the benefit of your orator, and be ordered to issue to your orator proper and sufficient certificates for four hundred shares of said stock. In said suit there intervened as co-complainants with your orator, S. D. Woodruff, E. L. Vandeboe, William H. Hart, H. R. Hosford, and D. B. Wesson, holding together thirty-nine of said void bonds of said Perry County. The holders of the remaining twenty-one of said one hundred bonds issued by said Perry County to said Belleville Company were and still are to your orator unknown. That in said suit the defendant, the Illinois Central Railroad Company, was a virtual party defendant, paying the costs and the attorneys' fees and directing the defense. Proceedings were had in said suit and upon the 24th day of May, 1901, a decree was rendered in said Court dismissing the bill of complaint in said suit. Thereupon the said complainants in said suit, among whom was your orator, appealed from the said decree of said Court to the Circuit Court of Appeals of the United States, Seventh Circuit. Subsequently, on or about the 6th day of May, 1902, the said
6 Circuit Court of Appeals, Seventh Circuit, reversed the said decree of said Court, and remanded said cause with instructions to enter a decree requiring said Belleville Company to issue certificates of stock as prayed for. On or about the 16th day of May, 1903, a decree was accordingly entered in said Court, declaring the said Belleville Company to be trustee for the said complainants in said suit and to hold for their use and benefit seven hundred and ninety shares of its capital stock, and ordering said Belleville Company to issue proper and sufficient certificates for said stock to said complainants.

V.

Pursuant to the terms of said decree rendered in this Court, and in obedience thereto, the said Belleville Company did on the — day of ——, 1904, deliver or cause to be delivered to your orator, a certificate, numbered 227, for four hundred shares (400) of the capital stock of the said Belleville Company, in proper and sufficient form, which said certificate is and has always been in the possession and ownership of your orator.

VI.

Your orator brings this its bill of complaint as stockholders as aforesaid in said Belleville Company, and as beneficiary under the said trust as adjudged by the aforesaid decree of the United States Circuit Court for the Southern District of Illinois, entered on or about the 16th day of May, 1903, and your orator brings this its bill of complaint, not only on its own behalf, but also on behalf of all other stockholders, or beneficiaries as aforesaid, who may choose to come in and bear their proposition of the cost and expenses of these proceedings, and to have the benefit thereof.

And your orator further complains and says;

VII.

That the Belleville Company was duly organized under and in pursuance of an Act of the General Assembly of the State of Illinois entitled "An Act to incorporate The Belleville and Southern Illinois Railroad Company," approved February 14, 1857, and under and in pursuance of another act of said General Assembly
7 entitled "An Act in aid of The Belleville and Southern Illinois Railroad Company," approved March 4, 1869, both of which Acts are public laws of the said State.

Pursuant to the power and authority vested in it by the aforesaid Acts of the General Assembly of the State of Illinois, the said Belleville Company constructed and put in operation a line of railway from Belleville in St. Clair County in said State of Illinois, to Du Quoin in the County of Perry in said State, a distance of fifty-six and four-tenths miles.

On the first day of October, 1866, there was issued by said Belleville Company, in pursuance of the power and authority vested in it by the aforesaid Acts, one million one hundred thousand dollars ($1,100,000) par value of first mortgage sinking fund bonds, due and payable thirty years after date, towit: upon the 1st day of October 1896, and bearing interest at eight per cent. per annum; which said bonds were secured by a mortgage upon the property of the said Belleville Company.

On the said first day of October, 1866, there was executed a lease by and between the said Belleville Company, party of the first part, and the Terre Haute Company, party of the second part, by which the said party of the first part leased to said party of the second part all its railway properties for the period of 999 years. The said party of the second part agreed to pay said party of the first part, as yearly rent for said railway properties so leased to said party of the second part by said party of the first part, forty per cent. of the gross earnings of said railway properties on the first $7,000 per mile so earned (except on coal business and business derived from the Belleville and Eldorado Railroad Company, the Texas and St. Louis Railroad Company, and the St. Louis and Southern Railroad Company, for which said business the party of the second part contracted to pay thirty per cent. of the gross earnings of said Railway properties on the first $7,000 per mile so earned); thirty per cent. of the gross earnings on said railway properties above $7,000 and up to $14,000 per mile so earned; and twenty per cent. on all gross earnings above $14,000 per mile so earned. That
8 said lease was duly recorded in the office of the Recorder of Deeds of each and every county through which passed the aforesaid line of railroad belonging to said Belleville Company.

VIII.

The said Belleville Company was operated under the aforesaid lease to the Terre Haute Company down to the — day of ——, 1895. During said period, towit: from the said 1st day of October, 1866

down to the — day of ——, 1895, the gross earnings of the said Belleville Company, and the rental under the aforesaid lease paid yearly by said Terre Haute Company to said Belleville Company, increased steadily. That there was paid, to best knowledge and belief of your orator, by said Terre Haute Company to said Belleville Company as rental as aforesaid, under said lease, for the year 1888 not less than the sum of $178,800; for the year 1890 not less than $187,000; for the year 1891 not less than $202,000; for the year 1892 not less than $217,729; for the year 1893 not less than $228,580; and for the year 1894 not less than $216,545.

Prior to the — day of ——, 1895, the said Belleville Company, pursuant to the authority and power vested in it by law, issued $1,275,000 par value of preferred capital stock, which was so preferred over all other stock of said Company that it was to receive dividends at the rate of eight per cent. per annum before any dividends were to be declared or paid on any other stock of said Company.

The said Belleville Company, pursuant to authority and power vested in it by law, on or before the — day of ——, 1885, issued other and further common stock, not so preferred as aforesaid, of which said common stock so issued the said certificate aforesaid for four hundred shares, owned by your orator is a part.

9 Under the aforesaid lease, and out of the rental paid thereunder by said Terre Haute Company to said Belleville Company, said Belleville Company paid to the best knowledge and belief of your orator, as dividends upon the aforesaid preferred capital stock, from the year 1885 down to and including the fiscal year of 1894, the following sums as dividends towit: For the year 1885, five per cent.; for the year 1886, five per cent.; for the year 1887, six and three-fourths per cent.; for the year 1888, six and three-fourths per cent.; for the year 1889, six and three-fourths per cent.; for the year 1890, eight and two-fifths per cent.; for the year 1891, eight and fifty-three one-hundredths per cent.; for the year 1892, eight per cent.; for the year 1893, eight per cent.; for the year 1894, eight per cent.

IX.

Your orator further states that the aforesaid lease, executed the 1st day of October, 1866, by and between the said Terre Haute Company and said Belleville Company, was a fair and proper lease, and beneficial to said Belleville Company. That under a fair, proper and competent management of said railway properties, so leased as aforesaid by said Belleville Company to said Terre Haute Company, which said fair, proper and competent management under the aforesaid lease would, to the best of your orator's information and belief, have continued had it not been for the unlawful, fraudulent and improper purpose, design and acts, hereinafter set out, of the defendant, the Illinois Central Railroad Company, its officers and agents the gross earnings and rental of said Belleville Company would and should have continued to increase after the said — day of ——, 1895, and out of said gross earnings and rental which would

and should have been so earned after the — day of ——, 1895, the said Belleville Company could and would have paid dividends upon its common stock, not so preferred as aforesaid, among which common stock are the four hundred shares held by your orator as aforesaid. That the gross earnings of the railroad properties of said Belleville Company, to the best information and belief of your orator, did increase after the — day of —— 1895, and are now large enough to pay a dividend upon the common stock under the aforesaid lease of October the 1st, 1866, but that on account of the wrongful, unlawful and fraudulent purpose, design and acts hereinafter set out of said Illinois Central Railroad Company, its officers and agents, the rental realized by said Belleville Company did not continue to increase not has said yearly rental been sufficient to pay any dividends upon said common stock after said — day of —— 1895, and your orator states upon its best information and belief that said rental will not be sufficient to pay any dividends upon said common stock during the continuance of the wrongful, unlawful and fraudulent arrangements hereinafter set out.

X.

On the — day of ——, 1895, the said Illinois Central Railroad Company owned or operated a certain line of railroad with its western terminus in the town of Duquoin in the State of Illinois, but said Illinois Central Railroad Company on said date had no line of railway of its own leading into the city of East St. Louis. On said date the line of railway owned by the said Belleville Company and leased as aforesaid to the said Terre Haute Company, extended from said town of Duquoin, Illinois, to the town of Belleville, Illinois, and the said Terre Haute Company owned and operated a certain line of railway from the said town of Belleville, Illinois, to the city of East St. Louis. On or before the said — day of ——, 1895, the said Illinois Central Railroad Company, through its duly appointed officers and agents, being desirous of procuring a line of railway of its own into the city of East St. Louis, formed a fraudulent, wrongful and unlawful plan and scheme to secure control of the said Belleville Company and of said Terre Haute Company, by acquiring the control of a sufficient number of the shares of the capital stock of each of said companies to control the policies and destinies of said last named companies, which policies and destinies were to be conducted purely and solely in the interest and for the benefit of said Illinois Central Railroad Company, and in no wise in the interest or for the benefit of said Belleville or Terre Haute Companies, respectively. In pursuance of said fraudulent, unlawful and wrongful plan and scheme, on or about said — day ——, 1895, the said Illinois Central Railroad Company, acting through its duly appointed officers and agents, purchased or entered into certain agreements to purchase more than two-thirds but not all of the capital stock of the said Belleville Company. Your orator does not know and cannot allege that the certificates for said stock were transferred at once to said Illinois Central Railroad Company, but your orator

does allege that on or before the 1st day of April, 1896, in pursuance of said unlawful plan and scheme, and in pursuance of said agreements with the holders of more than two-thirds of the capital stock of said Belleville Company, the said Illinois Central Railroad Company was in the virtual control of the said Belleville Company. Your orator further alleges that in pursuance of said purchases or the agreements to purchase the aforesaid two-thirds of the capital stock of said Belleville Company, it was understood and agreed that the said Belleville Company should execute a certain lease, hereinafter mentioned, and executed on or about the 4th day of April, 1896, whereby the railroad properties of the said Belleville Company, leased as aforesaid to the said Terre Haute Company, should be subleased or transferred to the said Illinois Central Railroad Company upon new and different considerations. Your orator is not able to state with any accuracy the exact terms of these purchases or agreements to purchase, for the reason that the exact terms are matters within the sole knowledge of the defendants herein and persons to your orator unknown.

But your orator does allege and assert that prior to the execution of the purported lease, on or about the 4th day of April, 1896, and prior to any action of the stockholders, directors or officers of the Belleville Company in contemplation of said purported lease, by reason and in pursuance of the aforesaid wrongful, fraudulent and unlawful plan, scheme and acts of the said Illinois Central
12 Railroad Company, and by virtue of the aforesaid purchase or agreements to purchase, the Board of Directors of said Belleville Company, its officers and the owners of more than two-thirds of its stock were entirely under the control of said Illinois Central Railroad Company.

XI.

Your orator further states that in pursuance of the aforesaid purchases or agreements to purchase whereby the said Illinois Central Railroad became the controlling owner of more than two-thirds of the capital stock of said Belleville Company, but not all of said stock, and whereby the Directors of said Belleville Company its officers and the owners of more than two thirds of its stock, became the agents and creatures of said Illinois Central Railroad Company, a form of lease was executed on or about the 4th day of April, 1896, by and between the said Terre Haute Company, the said Illinois Central Railroad Company and the said Belleville Company, a certified copy of which said form of lease is attached to this bill of complaint, marked "Exhibit A," hereby referred to and duly made part hereof. That said form of lease was dated and was by its terms to take effect as and from the 1st day of October, 1895, and to continue in effect for the period of 99 year- with privilege of renewal for a like period. That said lease was highly beneficial to the said Illinois Central Railroad Company but was detrimental to the true interests of the said Belleville Company. That the legal force and effect of said lease, if valid, was to transfer all the properties of the said Belleville Company, previously held by the said Terre Haute Company as lessee

under the aforesaid lease of October 1st, 1866, to the Illinois Central Railroad Company as lessee or sub-lessee. By the terms of said lease of April 4, 1896, the Illinois Central Railroad Company, as lessee or sub-lessee, agreed to pay to said Belleville Company as yearly rental for its said railroad properties the sum of $61,200, to
13 be paid to the holders for the time being of the outstanding preferred stock of said Belleville Company as dividends guaranteed to them by the lessee, at the rate of four and eight-tenths (4.8) per cent. per annum. That the said Illinois Central Railroad Company, as lessee, further agreed to pay to said Belleville Company as rental for said railroad properties, during the continuance of said lease, the interest which might fall due on the outstanding bonds of said Belleville Company which were then in existence or which might be issued in renewal or extension thereof during the continuance of said lease. That upon the 4th day of April, 1896, there were outstanding no more than $1,000,000 of bonds of said Belleville Company, which said bonds bore interest at the rate of eight per cent. per annum. That under the said lease of April 4th, 1896, the Illinois Central Railroad Company agreed to pay no other or further rental than the rental above mentioned. That said rental so agreed to be paid to said Belleville Company, and agreed to be accepted by said Belleville Company, was far below the rental which had been received prior thereto by said Belleville Company, under the said lease of October 1st, 1866, and far below the amount which the said Belleville Company would have continued to receive, had said lease of October 1st, 1866, continued in full force and effect. That the yearly rental so agreed to be accepted by said Belleville Company under said lease of April 4th, 1896, was not a fair, proper or adequate rental for the railway properties so purported to be leased as aforesaid. That the effect of said lease of April 4th, 1896, if valid, would be to destroy the value of the shares of common stock, so issued as aforesaid by said Belleville Company, a part of which said common stock are the four hundred shares held by your orator. That all of the aforesaid facts were well known to the defendants the Illinois Central Railroad Company, the Belleville Company and the Terre Haute Company, and their officers and agents, at the time said lease was executed. That none of said acts have ever been consented to or ratified by your orator, nor are any of said acts binding upon your
14 orator. That all of the aforesaid acts were in fraud of the rights of your orator, for the many reasons heretofore set out.

XII.

By virtue of and in furtherance of the aforesaid wrongful, unlawful and fraudulent scheme and plan of said Illinois Central Railroad Company, on or before the 30th day of June, 1897, the said Illinois Central Railroad Company acquired the voting power of the certificates for more than two-thirds, but not all, of the shares of capital stock of said Belleville Company and of said Terre Haute Company, respectively, all of which said certificates bore written indorsements giving to said Illinois Central Railroad Company the absolute and unrestricted right and power to vote all of said stock represented by

said certificates. On said 30th day of June, 1897, said Illinois Central Railroad Company, by virtue of the facts aforesaid, held the absolute control of the officers and official action of said Belleville Company and said Terre Haute Company. Before the special meeting of the stockholders of the said Belleville Company and of said Terre Haute Company, hereinafter mentioned and held in the City of Chicago, upon the ninth day of September, 1897, the said Illinois Central Railroad Company, by virtue of the control so acquired as aforesaid, elected Boards of Directors of said Belleville Company and of said Terre Haute Company, which said Boards of Directors were composed of persons who were creatures of and under the absolute control of said Illinois Central Railroad Company, and who were elected for the purpose of carrying out the fraudulent and unlawful plans and designs of said Illinois Central Railroad Company, and were not elected or intended to be elected in the true interests of said Belleville Company or of said Terre Haute Company, respectively. That said Board of Directors of said Belleville Company elected as officers of said Belleville Company persons who were at the same time officers and agents of said Illinois Central Railroad Company, and under the absolute control of said Illinois Central Railroad Company. That said Board of Directors of said Belleville Company before the special meetings of stockholders, hereinafter mentioned, entered into an agreement with the directors of the Terre Haute Company to grant bargain sell and transfer all of the railroad properties of said Belleville Company to said Terre Haute Company. That the said Boards of Directors of said Companies passed resolutions purporting to authorize the said sale and transfer. That on the ninth day of September, 1897, there were held in the city of Chicago special meetings of the stockholders of said Belleville Company and of said Terre Haute Company, at which said meetings the aforesaid actions and resolutions of the Boards of Directors of said Companies, respectively, were purported to be ratified and confirmed and approved by a vote of stockholders owning more than two-thirds of the shares of stock of said Companies, respectively. That said meetings were held in the offices of the Illinois Central Railroad Company, and were absolutely controlled by said Company. That the shares of stock, in each of said Companies respectively, which were voted in favor of said transfer were the shares of stock acquired, held and controlled as aforesaid, by said Illinois Central Railroad Company. That the shares of stock of the Belleville Company so voted in favor of said Transfer, at the said special meeting of stockholders of said Belleville Company, were the shares acquired as aforesaid by said Illinois Central Railroad Company in pursuance of the aforesaid wrongful, fraudulent and unlawful plan and scheme of said Illinois Central Railroad Company, and that said shares were not voted or intended to be voted in the true interests of said Belleville Company. That the shares of stock now owned by your orator were held in trust for your orator by said Belleville Company, and were not voted in favor of said transfer, nor did said Belleville Company have any power to vote said stock for your orator. That your orator is in no wise bound by the aforesaid acts of the directors and stockholders of said Belleville Company, nor has your orator ever

consented to or ratified the same. That said acts were in fraud of the rights of your orator for the many reasons heretofore set out.

XIII.

Your orator further states that, in pursuance of the aforesaid actions of the directors and stockholders of said Belleville Company, the officers of said Belleville Company on the 10th day of September, 1897, purported to execute a certain indenture transferring the fee simple title to all the railroad properties of said Belleville
16 Company to said Terre Haute Company, a certified copy of which said indenture is attached to this bill of complaint, marked "Exhibit B," hereby referred to and duly made part hereof. That by the terms of said indenture all the railway properties and corporate rights and franchises pertaining thereto, of said Belleville Company, were purported to be granted, bargained, sold and assigned to said Terre Haute Company to be held by the latter, its successors and assigns, forever. That the consideration expressed in said deed and agreed to be paid by the Terre Haute Company and accepted by the Belleville Company, was the payment by the Terre Haute Company to the Belleville Company of $1,400,000 of bonds of the Terre Haute Company, bearing interest at the rate of four per cent. and maturing in 1951, the assumption of the outstanding first mortgage bonds of the Belleville Company, and the assumption of the liability of the Belleville Company under the aforesaid form of lease, of April 4th, 1896. That the said consideration expressed in said deed, which was agreed to be paid by said Terre Haute Company, and which was agreed to be accepted by said Belleville Company, was grossly inadequate. That said deed was executed as part of and in pursuance of the aforesaid wrongful, fraudulent and unlawful scheme and plan of said Illinois Central Railroad Company, and was not executed in pursuance of the true interests of said Belleville Company. That said acts have never been consented to or ratified by your orator, and are in no wise binding upon your orator. And that said acts were in fraud of the rights of your orator, for the many reasons heretofore set out.

XIV.

Your orator further states that in pursuance and furtherance of the aforesaid wrongful, unlawful and fraudulent scheme and plan of said Illinois Central Railroad Company, and by virtue of the control acquired by the aforesaid purchase of more than two-thirds of the capital stock of said Terre Haute Company by said Illinois Central Railroad Company, upon September 15th, 1897, there
17 was executed by said Terre Haute Company as lessor, and said Illinois Central Railroad Company as lessee, a form of supplemental indenture of lease, purporting to confirm the aforesaid form of lease of April 4th, 1896, a certified copy of which said supplemental indenture of lease is attached to this bill of complaint, marked "Exhibit C," hereby referred to and duly made part hereof. That said supplemental indenture of lease has never been consented

to nor is it in any wise binding upon your orator, and was made in fraud of the rights of your orator, for the many reasons heretofore set out.

XV.

Your orator further states that on or about the 17th day of February, 1904, in pursuance and furtherance of the aforesaid wrongful, unlawful and fraudulent scheme and plan of said Illinois Central Railroad Company, there was executed a form of indenture by and between the Terre Haute Company and the Illinois Central Railroad Company, whereby all the railroad properties, corporate rights and franchises, which had been attempted to be deeded as aforesaid, on the 10th day of September, 1897, by said Belleville Company to said Terre Haute Company, were, on said 17th day of February, 1904, purported to be bargained, sold, granted and assigned by said Terre Haute Company to said Illinois Central Railroad Company, its successors and assigns, forever, a certified copy of which said deed of February 17th, 1904, is attached to this bill of complaint, marked "Exhibit D," hereby referred to and duly made part hereof, That your orator has never consented to said indenture, nor is your orator in any wise bound thereby That said deed of February 17th, 1904, was made and entered into in fraud of the rights of your orator, for the many reasons heretofore set out.

XVI.

Your orator further states that by reason of the aforesaid fraudulent, wrongful and unlawful scheme, plan and acts of said Illinois Central Railroad Company, and by reason of the aforesaid form of lease of April 4th, 1897, by and between the Illinois Central Railroad Company, the Terre Haute Company and the Belleville Company; the form of deed of September 10th, 1897, by and be-
18 tween the Terre Haute Company and the Belleville Company; the form of supplemental lease of September 15th, 1897, by and between the Terre Haute Company and the Illinois Central Railroad Company; and the form of deed of February 17th, 1904, by and between the Terre Haute Company and the Illinois Central Railroad Company, all of which said forms of leases and deeds were in fraud of the rights of your orator, for the many reasons heretofore set out, the only asset now left to the Belleville Company, were said forms of leases and deeds valid, is the sum of $1,400,000 par value of the bonds of the Terre Haute Company, maturing July 1, 1851, and bearing interest at the rate of four per cent. per annum, so agreed to be issued as aforesaid by said Terre Haute Company to said Belleville Company under said form of deed between said parties, dated September 10th, 1897. That the income upon said bonds is the sum of $56,000 per annum. That said sum of $56,000 is only sufficient to pay between four per cent. and four and one-half per cent. per annum upon the outstanding preferred capital stock of said Belleville Company, all of which said preferred capital stock of said Belleville Company is owned and controlled to the best knowledge and belief

of your orator, by said Illinois Central Railroad Company That said preferred capital stock of said Belleville Company is preferred, as aforesaid, at the rate of eight per cent. per annum. That by reason of the wrongful, fraudulent and unlawful plan, scheme and acts of said Illinois Central Railroad Company, the common stock held by your orator would be deprived of all practical value, if the aforesaid proceedings were valid. That the said Belleville Company, for all practical purposes, has now been amalgamated into and become part and parcel of the Illinois Central Railroad Company system. That said Belleville Company has no longer any independent existence, but is absolutely under the control of said Illinois Central Railroad Company, and is operated, controlled and used solely in the interest and for the benefit of said Illinois Central Railroad Company. That the corporate books of said Belleville Company are now kept in the office of said Illinois Central Railroad Company and by its officers
19 and agents in Chicago, New York, or some other place to your orator unknown. That the directors of said Belleville Company, and its corporate officers are the creasu*t*res of and under the sole control of said Illinois Central Railroad Company, and were elected by the vote of the stock purchased and owned by said Illinois Central Railroad as aforesaid, and were elected for the purpose of serving the interests of said Illinois Central Railroad Company and not the interests of said Belleville Company or its stockholders, among whom is your orator.

XVII.

Your orator further states that by reason of the absolute fraudulent and wrongful control so acquired as aforesaid by the Illinois Central Railroad Company over the said Belleville Company, the said Illinois Central Railroad Company, through its officers and agents, has wrongfully and in open defiance of the laws of the State of Illinois, prevented the Belleville Company from making the annual reports, as required by laws of the State of Illinois, to the Railroad and Warehouse Commissioners of said State. That said Belleville Company has utterly failed and neglected to file any report with said Railroad and Warehouse Commissioners since the year 1897. That the purpose of said Illinois Central Railroad Company in so preventing said Belleville Company from making said reports as required by law, is, among other purposes to conceal the earnings capacity and income of the railroad properties of said Belleville Company; to conceal the amount of the capital stock of said Belleville Company owned or controlled by said Illinois Central Railroad Company; and to conceal the fraud that has been perpetrated by said Illinois Central Railr*aod* Company upon said Belleville Company, and upon your orator and other- similarly situated.

Your orator further alleges to the best of its information and belief, that said failure of said Belleville Company to file said reports as required by law, will continue so long as said Belleville Company remains under the dominion and control of said Illinois Central Railroad Company. That by reason of said failure to file said
20 reports, said Belleville Company is now indebted to the State of Illinois in a large sum of money by way of penalty, which

said penalty will continue to increase so long as the aforesaid wrongful, fraudulent and unlawful control of said Illinois Central Railroad Company over said Belleville Company continues. That your orator has in no wise been a party to the aforesaid wrongful acts, nor has your orator ratified them or consented thereto. That said acts are manifestly in fraud of the rights of your orator, for the many reasons heretofore set out

XVIII.

Your orator further states that your orator has no remedy at law for the wrongs heretofore set out, nor has your orator any remedy within the corporation itself. That a demand upon the directors or officers of the corporation itself, to bring the present suit would have been vain and futile for the many reasons heretofore set forth in this bill of complaint. That the present suit is not collusively brought for the purpose of giving this Court jurisdiction. That the acts herein complained of were not known to your orator until after the final decree of this Honorable Court, ordering the certificate for four hundred shares of capital stock to be issued to your orator.

XIX.

Your orator further states that on September 15th, 1897, there was executed a certain deed of trust from the Illinois Central Railroad Company and the Terre Haute Company to the United States Trust Company of New York, to secure the issue of $15,000,000 of gold bonds. That among other properties conveyed by said deed of trust to said United States Trust Company of New York, trustee as aforesaid, to secure said issue of bonds, were the railroad properties purported to be conveyed as aforesaid by said Belleville Company to said Terre Haute Company under the aforesaid form of deed of September 10th, 1897. Your orator does not know the exact terms of said deed of trust, but your orator joins said United States Trust Company of New York in this bill as a defendant, in order that said Trust Company may, if it so desires, appear in this Honorable Court and
21 defend the interests of the holders of the bonds issued under the aforesaid deed of trust, if any there are.

XX.

For as much as your orator can have no adequate relief except in this Court, and to the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and may make a full disclosure and discovery of all the matters aforesaid according to the best of their knowledge, remembrance, information and belief, and true and direct answer make to the matters hereinbefore stated and charged, but not under oath except as to the specific interrogatories hereinafter set out, answer under oath being hereby expressly waived except as to the specific interrogatories hereinafter set out. To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths,

and according to the best and utmost of their several respective knowledge, remembrance, information and belief, full, true, direct and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer; that is to say:

Interrogatory No. 1. State the yearly gross earnings of the railroad properties leased by the Belleville and Southern Illinois Railroad Company to the St. Louis, Alton and Terre Haute Railroad Company, on or about the 1st day of October, 1866, for each fiscal year during the period of ten years immediately preceding the 4th day of April, 1896.

Interrogatory No. 2. State the yearly gross earnings of the same railroad properties, mentioned in Interrogatory No. 1, for each fiscal year or part thereof from the time when said railroad properties were first transferred to the Illinois Central Railroad Company, as lessee or sub-lessee down to the date of the filing of this bill of complaint.

22 Interrogatory No. 3. Whether or not the Illinois Central Railroad Company, through its officers and agents, either directly or indirectly entered into any agreement or agreements to purchase any shares of the capital stock of the Belleville and Southern Illinois Railroad Company, on or before the 1st day of April 1896, whereby it was either agreed or understood that the railroad properties owned by the Belleville and Southern Illinois Railroad Company should be leased, sub-leased or transferred to the Illinois Central Railroad Company?

Interrogatory No. 4. If Interrogatory No. 3 is answered in the affirmative, state how many of such agreements were made, how many shares of the capital stock of the Belleville and Southern Illinois Railroad Company were affected thereby, with whom said agreements were made, the date of said agreements, and the terms of said agreements in full.

Interrogatory No. 5. Whether or not the Illinois Central Railroad Company, through its officers or agents, either directly or indirectly, entered into any agreement or agreements, on or before the 4th day of April, 1896, with any stockholder or stockholders of the Belleville and Southern Illinois Railroad Company, whereby any shares of the capital stock of the Belleville and Southern Illinois Railroad Company were to be surrendered or delivered under the terms of any deed of trust, or otherwise, to the Illinois Central Railroad Company, or to any other party or parties, with power or authority in the Illinois Central Railroad Company to vote said shares of stock?

Interrogoatory No. 6. If Interrogatory No. 5. is answered in the affirmative, state how many of such agreements were made, the dates and terms of such agreement or agreements in full, with whom such agreement or agreements were made, and the number of shares of the capital stock of the Belleville and Southern Illinois Railroad Company, delivered in pursuance of such agreement or agreements, to whom said shares were delivered, and the dates upon which each and every share was delivered.

23 Interrogatory No. 7. Whether or not the Illinois Central Railroad Company now holds or has ever held the power or

authority to vote any shares of the capital stock of the Belleville and Southern Illinois Railroad Company.

Interrogatory No. 8. If Interrogotory No. 7 is answered in the affirmative, state the number of shares upon which such power or authority is now or has ever been held, the time or times when such power or authority was first acquired for each and every share of stock held, and from whom such power or authority was acquired, and the terms of each and every agreement under which such power or authority was acquired.

Interrogatory No. 9. Whether the Illinois Central Railroad Company now owns or has ever owned any share or shares of the capital stock of the Belleville and Southern Illinois Railroad Company?

Interrogatory No. 10. If Interrogatory No. 9 is answered in the affirmative, state how many of such shares were so owned, when such share or shares were first acquired, from whom such shares were purchased, and the terms in full of each and every agreement to which the Illinois Central Railroad Company was a party, leading up to such purchase or purchases.

Interrogatory No. 11. Whether or not the Illinois Central Railroad Company, through its officers or agents, directly or indirectly ever entered into any agreement or agreements with any person or persons corporation or corporations, in contemplation of any transfer, lease or sub-lease, of the railroad properties owned by the Belleville and Southern Illinois Railroad Company, or any part thereof, to the Illinois Central Railroad Company?

Interrogatory No. 12. If Interrogatory No. 11 is answered in the affirmative, state with whom and upon what date or dates such agreement or agreements were made, and the terms thereof in full.

Interrogatory No. 13. Whether or not the Belleville and Southern Illinois Railroad Company and the St. Louis, Alton and Terre Haute Railroad Company entered into any agreement or agreements
24 in contemplation of any transfer, lease or sub-lease of the railroad properties owned by the Belleville and Southern Illinois Railroad Company to the Illinois Central Railroad Company?

Interrogatory No. 14. If Interrogatory No. 13 is answered in the affirmative, state the terms of such agreement or agreements in full and the time or times when such agre-ment or agre-ments were made.

Interogatory No. 15. State the number of shares of its capital stock preferred and common, respectively, that had been issued by the Belleville and Southern Illinois Railroad Company on or before the 1st day of October, 1895.

Interrogatory No. 16. State the name of each and every stockholder of the Belleville and Southern Illinois Railroad Company upon the books of said Company on the date of the filing of this bill of complaint, and the number of shares of preferred and common stock, respectively held by each such stockholder.

Interrogatory No. 17. State the amount of the bonded indebtedness of the Belleville and Southern Illinois Railroad Company on the 1st day of October, 1895.

Interrogatory No. 18. What were the assets of the Belleville and

Southern Railroad Company on the date of the filing of this bill of complaint.

Interrogatory No. 19. Whether or not the Belleville and Southern Illinois Railroad Company received $1,400,000 par value of the bonds of the St. Louis, Alton and Terre Haute Railroad Company, bearing interest at four per cent and maturing July 1st, 1951, as consideration for the transfer of its railroad properties to the St. Louis Alton and Terre Haute Railroad Company, on or about the 10th day of September, 1897?

Interrogatory No. 20. If Interrogatory No. 19 is answered in the affirmative, state whether or not the Belleville and Southern Illinois Railroad Company still holds and owns said $1,400,000 of bonds?

Interrogatory No. 21. If Interrogatory No. 20 is answered in the negative, state whether the Belleville and Southern Illinois Railroad Company have ever received anything in lieu of said bonds, and if so, what?

25 Interrogatory No. 22. Whether the Illinois Central Railroad Company now owns or has the power or authority to vote any share or shares of the capital stock of the St. Louis, Alton & Terre Haute Railroad Company, or has ever owned or held the power or authority to vote any share or shares of said stock?

Interrogatory No. 23. If Interrogatory No. 22 is answered in the affirmative, state the number of shares so owned or upon which such power or authority to vote was held, and the times when such shares or such power or authority to so vote were acquired.

Interrogatory No. 24. Has the Belleville Company in its possession or control books containing minutes of the meetings of its stockholders and directors since January 1, 1894?

And in consideration of the facts and matters herein stated your orator now respectfully prays a decree of this Honorable Court, cancelling and declaring forever void and of no effect the form of lease bearing date October 1st, 1895, and executed on or about the 4th day of April, 1896, by and between the St. Louis, Alton and Terre Haute Company as party of the first part, the Illinois Central Railroad Company as party of the second part, and The Belleville & Southern Illinois Railroad Company as party of the third part, so far as said indenture affects or purports to affect in any way the properties, franchises, rights or liabilities of the Belleville Company; cancelling and declaring forever void and of no effect the form of deed bearing date the 10th day of September, 1897, by and between the Belleville & Southern Illinois Railroad Company as party of the first part, and the St. Louis, Alton & Terre Haute Railroad Company as party of the second part, so far as said indenture affects or purports to affect in any way the properties, franchises, rights or liabilities of the Belleville Company; cancelling and declaring forever void and of no effect the form of supplemental lease bearing date September 15th, 1897, by and between the St. Louis, Alton & Terre Haute Railroad Company, party of the first part, and

26 the Illinois Central Railroad Company as party of the second part, so far as said indenture affects or purports to affect

in any way the properties, franchises, rights or liabilities of the Belleville Company; and cancelling and declaring forever void and of no effect the form of deed bearing date the 17th day of February, 1904, by and between the St. Louis, Alton & Terre Haute Railroad Company, party of the first part, and the Illinois Central Railroad Company, party of the second part, so far as said indenture affects or purports to affect in any way the properties, franchises, rights or liabilities of the Belleville Company; and that The Belleville & Southern Illinois Railroad Company be ordered to return and deliver up and account for whatever consideration it may have received under the aforesaid forms of deeds and leases to the party or parties from whom such consideration may have moved.

And your orator prays a decree of this Honorable Court, ordering the defendant, the Illinois Central Railroad Company to account for and pay over to The Belleville & Southern Illinois Railroad Company, or to a receiver to be appointed for said Belleville & Southern Illinois Railroad Company, such proportion of the yearly gross earnings as said Belleville & Southern Illinois Railroad Company is entitled to under the lease executed by and between the Belleville & Southern Illinois Railroad Company and the St. Louis, Alton & Terre Haute Railroad Company, bearing date October 1st, 1866; such accounting to cover each fiscal year, or part thereof, from the time when the Illinois Central Railroad Company first acquired the railroad properties of The Belleville Company as lessee or sub-lessee under the lease executed on or about the 1st of April, 1896, up to the time of such accounting.

Your orator further prays an order appointing a receiver for The Belleville & Southern Illinois Railroad Company, with the usual powers of such receivers; and that the Illinois Central Railroad Company, through its officers and agents, to be ordered to sur-
27 render and deliver to said receiver all the corporate assets, books, papers and everything that rightfully belongs to The Belleville & Southern Illinois Railroad Company, and that the Illinois Central Railroad Company be ordered to account to such receiver, as is hereinbefore prayed. That the defendant, the Illinois Central Railroad Company, its officers and agents, be restrained from further violating the rights of your orator, and be ordered, directed and restr-ined in particular from interfering in any way with said Receiver, or with the operation of said Belleville Company as an independent and separate railroad company; and for such other and further relief as the equity of the case may require and to your Honors may seem meet and just.

May it please your Honors to grant unto your orator not only the relief conformable to the prayer of the bill, but also writs of *sbu*-pœna of the United States of America directed to the Illinois Central Railroad Company, the St. Louis, Alton & Terre Haute Railroad Company, The Belleville & Southern Illinois Railroad Company, and the United States Trust Company of New York, commanding them on a day certain to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the prem-

ises as to the Court shall seem proper and required by the principles of equity and good conscience.

STEWART, ELIOT & WILLIAMS,
J. M. BLAYNEY, JR., AND
SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainants.

STATE OF OHIO, *County of Cuyahoga, ss:*

On this 11th day of August, 1905, personally appeared before me H. R. Newcomb, known to me to be President of the Citizens' Savings and Trust Company, who, being by me duly sworn, says that he is the President of the Citizens' Savings and Trust Company, and that the foregoing bill of complaint is true of his knowledge, except
28 as to those matters stated on information and belief, and as to those matters he believes it to be true.

H. R. NEWCOMB.

Sworn to and subscribed before me, this 11th day of August, 1905.

[NOTARIAL SEAL.] H. J. CRAWFORD,
Notary Public for the County of Cuyahoga, State of Ohio.

My commission expires the 20th day of May, 1907.

NOTE.—The defendant, The Belleville & Southern Illinois Railroad Company, is hereby required to answer Interrogatories number- respectively: 1, 7, 9, 13, 14, 15, 16, 17, 18, 19, 20, 24.

The defendant, the Illinois Central Railroad Company, is hereby required to answer Interrogatories number- respectively: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 21, 22, 23.

The defendant, the St. Louis, Alton & Te-re Haute Company, is hereby required to answer Interrogatories numbered respectively: 1, 13, 14, 19, 21, 22, 23.

Endorsed: Filed August 24, 1905. Daniel Hogan, Clerk. By A. G. Hamilton, Deputy.

29 EXHIBIT A.

This Indenture dated the first day of October, A. D. one thousand eight hundred and ninety-five (1895) by and between The St. Louis Alton and Terre Haute Railroad Company hereinafter called the "Terre Haute Company" as lessor and party of the first part; the Illinois Central Railroad Company, hereinafter called the "Illinois Central Company" as lessee and party of the second part, and the Belleville and Southern Illinois Railroad Company as party of the third part.

Whereas, the Terre Haute Company is the owner of a certain line of railway in the State of Illinois and is the owner and holder of certain bonds and stocks of other corporations of said State, and is

in possession, control and operation as lessee of a certain line of railway belonging to The Belleville and Southern Illinois Railroad Company hereinafter called the "Belleville Company" under and by virtue of a lease between said Terre Haute and Belleville Companies dated October 1st, 1866, as modified by a certain agreement between said companies, dated June 10th, 1882, and further modified by another agreement between said companies dated December 10th, 1886, and further modified by another agreement between said companies dated October 1st, 1895, which later agreement was made in contemplation of these presents.

And whereas, the Terre Haute Company is also in possession, control and operation as lessee of other lines of railway of certain railroad companies, namely of the Belleville and Eldorado Railroad by virtue of a lease dated July 1, 1880; of the Belleville and Carondelet Railroad by virtue of a lease dated June 1, 1883, of the St. Louis Southern Railroad, by virtue of a lease dated December 1, 1886; of the Carbondale and Shawneetown Railroad, also by virtue of said lease last mentioned; and of the Chicago, St. Louis and Paducah Railway by virtue of a lease dated March 1, 1888,

And Whereas, the Terre Haute Company in consideration of the covenants hereinafter set forth on the part of the Illinois Central Company as lessee to be by it kept and performed, has duly agreed to make a contract and arrangement for leasing its property, real and personal, as hereinafter mentioned to the Illinois Central Company, and for subletting all and singular the railroads and other properties of the said other Railroad Companies now leased to the Terre Haute Company, all the said leased railroads and other appurtenances being hereinafter called the "leased lines."

Now, This Indenture Witnesseth:

Demised Premises and Habendum Clause.

Article First: That said The St. Louis Alton and Terre Haute Railroad Company in consideration of the premises and of the rents and covenants hereinafter reserved and contained on the part of the lessee to be paid, kept and performed has granted, demised, let and leased, and does by these presents, grant, demise, let and lease unto the said Illinois Central Railroad Company, its successors and assigns all and singular its railroad extending from East St. Louis to Belleville in the County of St. Clair and State of Illinois, and all other railroads constructed, now owned, held, possessed or controlled by the said Terre Haute Company or which may be hereafter owned, acquired possessed, or controlled by it, by whatsoever title, whether by lease or otherwise, the same may be owned, held, possessed or controlled and including the said leased lines and each and all of them; and also all the railways, terminals or terminal and trackage rights or contracts, lands, tenements, hereditaments, ways and right of way now owned, held possessed or controlled, or which may be hereafter owned, held, possessed or controlled by the said lessor company for any and all purposes in connection with the construction, working, maintenance and operation of the same or any or all of them otherwise, and all the easements, and appurtenances

thereunto belonging, or in any wise appertaining, and also all
31 branches, switches, sidings, tracks, bridges, depots, fences, stations, section houses, tanks, warehouses, freighthouses, engine houses, telegraph lines, car and machine shops and all other buildings, fixtures and improvements, and all and singular the property of said lessor company, real and personal, of whatever kind and description and wheresoever situated, now owned or held by the said lessor, the Terre Haute Company, or which may hereafter be acquired, owned or held by it for the use of said railroad or leased lines, or otherwise or in connection with the working, maintenance and operation of the same and including all locomotive tenders, stationary engines, cars, trucks, push cars, hand cars, and all other rolling stock and equipment, and all the tools, implements and machinery, now owned, held or possessed by the said lessor, The Terre Haute Company, or which may be hereafter owned, acquired, held or possessed by it for use in connection with the said railroad or in connection with the working, maintenance and operation of the same or said leased lines or either of them; and also all rights, powers, privileges and franchises now owned possessed by or reserved to the said lessor, the Terre Haute Company, in connection with the said property, railroad leased lines, telegraph line, or otherwise, or any part thereof; together with the tolls, issues and income and profits of all the said property, hereby demised and each and every part thereof possessed or accrued or accruing on said 1st day of October, 1895, and thereafter accruing.

To Have and To Hold the said road premises, property and appurtenances, together with the tolls, issues, income, and profits thereof, unto the said Illinois Central Railroad Company its successors and assigns for its and their own proper use and benefit as
32 lessee as of and from the 1st day of October in the year 1895, and for the term of Ninety Nine years then next ensuing and the said lessee, the Illinois Central Company, during the said term shall have the sole and exclusive right, power and authority to hold, occupy, use, enjoy, control, manage and operate said railroad, leased lines and property, and regulate, fix, vary, demand, collect, receive and dispose of all and every the rates, tolls, revenues and charges accrued or to accrue thereon or therefrom; the lessor hereby reserving a lien upon said demised property and also upon the income thereof to enforce and secure the performance by the lessee of the covenants of this indenture and of the obligations of the Terre Haute Company under said leases of the leased lines, but subject to any and all liens now existing upon said property the said Illinois Central Company yielding and paying for all and singular said premises to the said Terre Haute Company as lessor, its successors and assigns, at the times and in the manner hereinafter provided, the rents hereinafter specified and keeping and performing all, and singular the covenants and agreements hereinafter set forth to be kept and performed by it as such lessee.

Delivery to Illinois Central Company of Bonds and Stock.

Article Second: The Terre Haute Company shall forthwith deliver to the Illinois Central Company the certificates for all the stock of other companies now held or hereafter acquired by the Terre Haute Company duly endorsed in blank for transfer, the $225,000 par value of the first mortgage and Terminal bonds of the Terre Haute Company now in the latter's treasury, all stock and bonds of said leased lines or of the companies owning them held by the Terre Haute Company and all securities, assets and property of the Terre Haute Company in any way related to the said railroads, leased lines, or the companies owning them.

The Illinois Central Company shall be and it is hereby authorized during the continuance of this lease to receive, collect, and apply to its own use the interest, dividends and revenues on all the bonds, shares of stock, and other securities delivered to it by the
33 Terre Haute Company hereunder; and that the Terre Haute Company covenants and agrees, that it will at any and all times, on demand of the Illinois Central Company, execute such assignments, transfers and powers of attorney as may be required or demanded for that purpose.

The Illinois Central Company shall be and it hereby is authorized to transfer or cause to be transferred all such stocks, into its own name or into the name of its nominees, and shall be authorized during the continuance of this lease to vote upon the said shares for all purposes; and the Terre Haute Company covenants and agrees that it will at any and all times, on demand of the Illinois Central Company execute to it all such proxies and powers of attorney as may be required for that purpose.

The Illinois Central Company shall be and it hereby is authorized at any time or times during the continuance of this lease to sell, pledge or otherwise dispose of all or any of said bonds or other securities on such terms and in such manner as the Illinois Central Company may in its discretion determine, applying all and singular the proceeds thereof to the payment, satisfaction and discharge *pro tanto* of any indebtedness of the lessor now existing, or to the construction of betterments and improvements upon the demised premises or to the purchase of new equipment for use thereon or any of said leased lines, all of which betterments, improvements, and new equipments shall forthwith become part of the property hereby leased and subject to the operation hereof. All said shares of Stock, bonds and other securities or their proceeds until the same shall have been sold and applied as hereinbefore authorized, shall during the continuance of this lease be held by the Illinois Central Company as security for its performance, and the said stocks, bonds and other securities or their proceeds remaining at the time of the termination of this lease shall then be surrendered by the Illinois Central Company to the Terre Haute Company. All cash on hand or accounts re-
34 ceivable, claims, demands, and choses in action of every kind and nature whatever due or accruing to said lessors on or after said 1st day of October, 1895, shall be paid to and received and collected by the Illinois Central Company, but the same shall be ap-

plied by it to the payment and discharge of indebtedness of said lessor existing or accruing on said 1st of October, 1895, or for betterments or improvements of said leased property.

Sale and Transfer of Fuel, Materials, and Supplies.

Article Third: The Terre Haute Company hereby sells and transfers to the Illinois Central Company all the fuel, material and supplies of all kinds acquired or intended for consumption in connection with the maintenance or operation of the railways and property hereby leased and on hand at the date of this instrument. Upon the terminantion of this the Illinois Central Company shall deliver to the Terre Haute Company an amount of such fuel and other materials, equal in value to the amount of the fuel and other materials sold and transferred to it as aforesaid, or shall credit the Terre Haute Company with deficiency in settlement of the accounts between said companies hereunder.

List of Locomotives, &c.; Use and Description Thereof.

Article Fourth: A list in duplicat- shall forthwith be prepared and one original be delivered to the Illinois Central Company and the other retained by the Terre Haute Company of all locomotives, engines and cars of all descriptions, hereby demised, and of the machinery, tools, impliments and furniture delivered by the Terre Haute Company to the Illinois Central Company hereunder and all shares of stocks, bonds, assets and other property of the lessor not hereinbefore particularly described. Upon the termination of this lease the Illinois Central Company shall surrender to the Terre Haute Company an amount of locomotives, engines, cars, machinery, tools, impliments and furniture at least equal in value to the amount thereof delivered to it hereunder. But all such locomotives, engines, cars, machinery, tools, impliments and furniture may during the continuance of this lease, be used by the Illinois Central Company as fully as if it were the absolute owner thereof, and in case any thereof shall be worn out or become absolete or unnecessary or undesirable for use in connection with the maintenance or operation of the demised premises, the Illinois Central Company may sell or dispose thereof on such terms as it may see fit and in the event of such sale the proceeds thereof shall be applied to the purchase or acquisition of other property which shall be forthwith transferred to the Terre Haute Company and become subject to the operation of this lease, due credit being given said lessee therefor at the termination of this lease. Any portion of the demised premises appurtenant to any of the said railways now held or which may be acquired for any purpose incidental to the operation thereof such as premises acquired or held for the purpose of stations, depots, shops or other buildings, or for the supply of gravel, fuel or other material which in the judgment of the Illinois Central shall be no longer requisite for the use for the purpose for which the same shall have been acquired or used, and

Power to sell certain property.

likewise any parts of the tracks, sidings or roadways which shall have been thrown out of use by reason of straightening or alteration of the line of road or other cause, may be sold or disposed of by the Illinois Central Company subject to or in compliance with, any mortgages thereon and the lessor or lessors shall and will upon demand of the Illinois Central Company execute any and all instruments required for the purpose of enabeling the Illinois Central Company to obtain a release thereof from any of said mortgages and to sell and transfer the same to any purchaser. The proceeds of any such sale shall be applied to betterments and improvements of the demised premises, or in the acquisition of other property which shall be forthwith transferred to the lessor in exchange for the property sold, and become subject to the operation of this lease.

Application of Proceeds.

And moneys received as the proceeds of any portion of the demised premises which shall be taken by exercise of the power of eminent domain, or which shall be otherwise disposed of and any compensation or insurance money accrueing by reason of the destruction or loss of or damage to, any rolling stock or other property included in the demised premises and all other sums payable to the Terre Haute or Belleville Company during the continuance of this lease shall in like manner be received by the Illinois Central Company and shall be applied by it in like manner or in the payment and discharge of indebtedness existing or accruing on said 1st of October, 1895.

36 Lessees Covenants Rents, etc.

Article Fifth: In consideration of the premises the said lessee, Illinois Central Railroad Company, party of the second part hereto, have covenanted and agreed and does by these presents covenant and agree for itself, its successors and assigns, with the said lessor, party of the first part hereto, its successors and assigns, as follows, to-wit:—

1. That it, said lessee, shall and will for the period beginning on the 1st day of January, 1896, pay as an annual rent, in equal semi-annual installments, on the first days of Januarv and July, in each year during the term of this lease and any renewal or extension thereof, commencing July 1st, 1896, the sum of one Hundred and Thirt- Nine Thousand Two Hundred and Ninety-three Dollars ($139,293) per annum from January 1st 1896, in gold coin of the United States of the present standard of weight and fineness, which said rent shall be paid as follows: $78,093 thereof shall be paid to the holders for the time being of the present outstanding capital stock of the party of the first part as dividends guaranteed to them by the lessee, at the rate of two and one quarter (2¼) per cent. per annum of the par value of the said stock, namely thirty four thousand seven hundred and eight (34,708) shares of the par value of $100 each. $61,200 thereof shall be paid to the holder for the time being of the present outstanding preferred stock of the said

Belleville Company, as dividends guaranteed to them by the lessee at the rate of four and eight tenths (4.8) per cent. per annum of the par value of the said preferred stock of the Belleville Company, namely twelve thousand seven hundred and fifty (12,750) shares of the par value of $100 Dollars each. Such rental dividends shall be paid from time to time the first semi-annual payemnt to be made on July 1st, 1896 to the holders of said stock as the same shall appear upon the stock books of said companies respectively at the office of the lessee in the City of New York, and said lessee guarantees to the holders of said Terre Haute stock and of said Belleville prefer-ed stock the payment of such rental dividends during the term of this lease and any renewal or extension thereof.

2. That it, said lessee, at all times during the continuance of this lease shall and will maintain, manage, use and operate and keep in good and working order, condition and repair, at its own
37 expense, the said demised railroad property, leased lines and all the fixtures and appurtenances thereof, and keep the same supplied with motive power, rolling stock and equipment, and shall and will deliver up the said railroad and leased line and all fixtures and appurtenances together with motive power, rolling stock and other equipment equal in value to that now used on said railroad and property and suitable for use thereon, at the expiration of said term in as good repair and working order and condition as when delivered to it under this lease.

3. That it, said lessee, at all times during the terms of this lease shall and will pay and discharge all rents, expenses, costs, damages claims and demands whatsoever which have arisen or shall or may arise out of the maintenance, management and operation of the railroad and properties of the Terre Haute Company and said leased lines, and will and shall at all times during such period save and keep harmless and indemnify the Terre Haute and Belleville Companies therefrom, and shall and will defend all such actions and suits, now pending or which shall or may be brought for or on account thereof against said companies, or either of them, during said period, and will pay all taxes and assessments upon the railroad or other property hereby demised and upon the business or income of the same and upon the said Terre Haute and Belleville Companies or any of said leased lines now due or which during the term of this lease shall become due. In case the Illinois Central Company shall pay out of its own funds any indebtedness of the Terre Haute Company or the Belleville Company existing on the 1st day of October, 1895, for rents, taxes or interest, or any other obligations or liabilities of either of said Companies existing on said 1st day of October 1895, then the Illinois Central Company shall be entitled to the repayment on or befor- the termination of this lease by the Company for whose account such payment shall have been made of the amounts so paid and the Illinois Central Company shall have a lien for the principal thereof upon the railroad and property of said company. Upon the request of the Illinois Central Company any advances so made by it and not repaid to it out of the assets of the said Terre Haute Company as aforesaid shall be repaid to it

in the bonds of such other company secured by mortgage upon the property of said other company.

38 4th. That it, said lessee, shall pay as additional rent the interest which may fall due during the continuance of this lease on the outstanding bonds of the Terre Haute Company and of the Belleville Company now existing or which may be issued in renewal or extension thereof, and of any other bonds of said companies or either of them which may be hereafter issued by them with the written consent of the Illinois Central Company: and the Illinois Central Company agrees and covenants, upon the maturity of any of said bonds, to cause the same to be extended or renewed at a rate of interest not greater than the rate of interest now payable thereon, or to cause the same to be taken up or paid or exchanged for other bonds of the Terre Haute or Belleville Company which may hereafter be issued. In case the Illinois Central Company shall pay any part of the principal of said bonds out of its own funds, it shall have a lien upon the demised premises for the repayment to it on or before the termination of this lease of the amount of such principal so paid.

Further Covenants Terre Haute and Belleville Co.

Article Six: Each of said The Terre Haute and Belleville Companies agrees and covenants, upon demand of the Illinois Central Company from time to time during the continuance of this lease, to make, issue and deliver such bonds, bearing such rate of interest and payable at such time or times and secured in such manner as may be required for the purpose of taking up, retiring, paying or redeeming any bonds of such lessor company existing at the date of the execution of this lease to the end that the bonded indebtedness of such company shall continue during the entire term of this lease and any renewal thereof at the amount thereof now existing; and each of said lessor companies agrees that it will make, execute and deliver such deeds and mortgages of its property and franchises as may be required to secure any bonds so issued.

The said Terre Haute and Belleville companies severally agree that in case an extension of any issue of bonds outstanding issued by each of them can be procured at the rate of interest not gr-ater than the rate now payable thereon, it will upon request of the Illinois Central Company, extend the date of payment of such bonds by the execution and delivery to the holders of said bonds and any agreements required for that purpose, and coupons for the interest during the period of such extension, the lien of the original

39 mortgage for the security of said bonds being preserved unimpaired.

Lessors Covenants Seizure.

Article Seventh: And in consideration of the premises, the said lessor, party of the first part, for itself, its successors and assigns further covenants and agrees with the party of the second part, its successors and assigns as follows:

Quiet Enjoyment, etc., — Seizure.

1. That it, said party of the first part, is well and lawfully possessed of the premises hereby demised, and has full power to lease and demise the same as aforesaid, and to demise, sublet and lease the said leased lines, and that the same in the quiet enjoyment the said party of the first part shall warrant and defend unto said lessee, its successors or assigns, during the said term of ninety-nine years and any renewal or extension thereof.

Quiet Enjoyment.

2. That said lessee, party of the second part shall at all times during said term have the full and exclusive right to manage, use, operate and control said demised railroad and premises and to regulate and determine the rates, tolls, freight and charges of transportation over the whole or any part of the said demised railroads and premises except as otherwise provided by law, and to charge and collect the same to its own use: and shall have, use exercise and enjoy all the rights, powers and authority aforesaid, and all other corporate powers, and all rights, powers, easements and privileges now possessed or which may hereafter be acquired by the party of the first part and necessary and convenient to the use, possession, enjoyment or operation of the premises which can or may be lawfully exercised and enjoyed by the lessee as such in or about or in connection with said demised premises and the maintenance and operation thereof.

Lessee Appointed Agent of Lessor.

3. That in order to enable the said lessee to beneficially enjoy said property, rights, privileges and benefits herein demised, mentioned and specified said the party of the first part hereby appoints the party of the second part, its agent irrevocable during the term of this lease or any renewal thereof so long as the lessee shall perform the terms thereof with full power and right at the expense of the said party of the second part to use the name of the said party of the first part in and about the business, maintenance, operation and use of said property, with power to make any and all contracts in proper furtherance, of the objects hereinbefor- set forth, and not otherwise, with any person or corporation, in the name of the said party of the first part, and generally to do all other acts and things in and about the premises which the said party of the first part might or could lawfully do: and at the expense of the said party of the second part to use the name of the party of the first part in and about any legal proceedings, and suits either at law or in equity, as the said party of the second part may deem necessary and requisite in carrying out the object and intent of this indenture; but all rolling stock and other personal property which said party of the second part may or shall purchase, obtain or acquire for any purpose in connection with the premises hereby demised, except such as shall be purchased, obtained or acquired in renewal

or replacement of the rolling stock or other personal property included in this lease, or with or by means of property of the lessor or proceeds thereof shall be and remain the property of the said party of the second part, and may as well as any rails, or other fixtures or property which it desires to remove for the purpose of repairs, betterments or improvements, be removed and disposed of by said party of the second part for its own use; it being always understood and agreed, however that it shall maintain and keep and deliver up said railroad property hereby demised, with rolling stock and other equipment equal in value to the rolling stock and other equipment included in this lease, in as good repair and working order and condition as when delivered to it under this lease.

The Illinois Central Company is hereby authorized to perform either in its own name or in the name of the Terre Haute Company or of the Belleville Company, any and all contracts, engagements and leases of said companies respectively, and to make any payments of rent due under the lease of any property demised to it hereunder to the respective lessors thereof and the Illinois Central Company shall be authorized to receive and enjoy the benefit of all such contracts, engagements and leases.

Corporate Existence.

4. That the said party of the first part shall and will during the term of ninety nine years and any renewal or extension thereof, preserve or renew and maintain its corporate existence and organization, and at all times during the said period, on demand of the said
41 lessee, party of the second part hereto shall and will exercise and put in forse each and every corporate power and franchise and do and perform every corporate act necessary, useful or proper to carry out the povisions of this lease, and to enable the said Illinois Central Company as lessee, its successors or assigns to avail themselves or itself of, and use, exercise and enjoy the rights, powers and privileges hereby granted in respect of the railroad and property aforesaid of the lessor, and shall and will at any and all times on demand execute, acknowledge and deliver to the said lessee or its successors or assigns, such other and further instrument or instruments in writing under its corporate seal as may be necessary or desireable the better and more effectually to secure the purposes of this lease; all expenses incurred by the said party of the first part under this subdivision of Article seventh to be borne by the party of the second part.

Lease to Take Effect as of and From Oct. 1, 1895.

Article Eighth: The parties hereto further covenant and agree that this lease is to take effect and be in forse as of the 1st day of October, 1895; that all income and profits then accrued shall be expended and applied upon the premises or in the payments of the debts of the lessor theretofore accrued; and that the possession operation and maintenance of the demised premises, on and after said first day of October, 1895 shall be for the benefit and account of the lessee The

lessor covenants and agrees to place the demised property in the possession of lessee upon demand.

Renewal Covenant.

Article Nineth: And it is further covenanyed and agreed, that the said lessor, its successors or assigns will upon the termination of the term granted in this lease and provided the said rent shall have been duly paid and the covenants and ageements hereof duly performed on demand forthwith execute and deliver to the said lessee, its successors or assigns a renewal lease of the said premises for the further term of ninety-nine years and subject to the same rent, covenants, provises and agreements as are herein contained, excepting as to a renewal thereof.

42 Lessee Entitled to Possession and Enjoyment Until Default.

Article Tenth: Until default shall be made in the due and punctual payment upon demand of the said rent or any part thereof as and when the same shall be due and payable to said stockholders, as aforesaid and such default shall have continued for the period of ninety days or until default shall be made in the performance or observance by the Illinois Central Company of some covenant or condition of this indenture, and such default shall have continued for the period of ninety days after written demand made by the lessor upon the lessee for the performance or observance of such covenant or condition, the Illinois Central Company, its successors or assigns shall be suffered and permitted to retain actual possession of all and every the premises and real and personal property hereby leased and to exercise the rights and franchises appertaining thereto and to receive the earnings, income, rents, issues, and profits thereof and to manage, operate, collect, receive, use and enjoy the same and where it may be necessary, and not inconsistent with the purposes of this lease herein appearing, to change the form thereof or to invest any proceeds thereof.

Provisions as to Re-entry.

Provided always and these presents are upon this express condition, that if default shall be made in the payment upon demand of said rent or any part thereof and such default shall continue for the period of ninety days after said rent shall have become due and payable as aforesaid, or if default shall be made in the performance or observance by the Illinois Central Company of any covenant or condition of this indenture and such default shall continue for the period of ninety days after written demand by the lessor upon the lessee for the performance or observance of such covenant or condition, or if the said lessee shall be adjudged bankrupt or insolvent, or a receiver of its property be appointed, then and in every such case it

shall be lawful for the lessor or those having its estate in the premises to re-enter into or upon the said demised railroads, properties and premises or any part thereof, and the said railroads, properties and premise peaceably to hold and enjoy thenceforth, as if these present had not been made, without prejudice to any right of action or remedy which might otherwise be had or used in respect of any breach of any of the covenants in this lease contained.

43 If the said Terre Haute Company shall enter upon the premises, then said company may operate the same for account of the Illinois Central Company applying the net avails thereof, first to the payment of the expenses in connection with such entry or re-entry, and then the payment of the rent due or to accrue under these presents. The Illinois Central Company Covenants and agrees that if, in consequence of such default on its part, the party of the first part shall take possession of the premises as aforesaid and operate the same for account of the lessee, and shall not obtain sufficient from the net earnings thereof to make up the amount of the rent hereby reserved, it, said Illinois Central Company shall and will pay to the said stockholders any and all loss or difference of rent or guaranteed dividends for the residue of said term.

Indenture Binding upon and Available by Successors and Assigns—Provisions *Inter Sese* and not for Benefit of Third Parties.

Article Eleventh: All the covenants, promises, agreement- and right- in this indenture contained shall bind and apply to the successors and assigns of each of the parties of the first, second and third parts, lessor and lessee, whether so expressed or not, but nothing in this indenture expressed or implied is intended or shall be construed to confer upon or give to any person or corporation other than the parties hereto and the holders of the stock of said Terre Haute and Belleville Companies or their successors in interest any right, remedy or claims under or by reason of this indenture, or any covenant, condition or stipulation thereof or to render said lessee liable as assignee of the lease of any railroad heretofore demised to the Terre Haute Company and sublet hereunder; all its covenants, conditions and stipulations being intended to be and being for the sole and exclusive benefit of the parties hereto and the holders of the stock of the Terre Haute and the Belleville Companies or their successors in interest.

Assent of Belleville Co.

Article Twelfth: The Belleville Company joins in the execution of this lease to evidence its assent to the terms and provisions thereof so far as its property and interest are thereby affected, and becomes bound by such terms and provisions and entitled to the advantages hereof, as hereinbefore set forth.

In witness whereof the parties hereto of the first, second and third parts have caused these presents to be signed by their respective

presidents, or Vice Presidents, and their respective corporate
44 seals to be hereto affixed and attested by their Secretaries, as of the day and year first above written, these presents being executed in triplicate, but constituting one instrument.

[CORPORATE SEAL.]

THE ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY,
By CLARENCE F. PARKER, *President.*

Attest:
EDWARD F. LEONARD, *Secretary.*

Signed, sealed and delivered by the St. Louis Alton and Terre Haute Company in the presence of—
HARRY H. BUFORD,
Laclede Building, St. Louis, Mo.

[CORPORATE SEAL.]

ILLINOIS CENTRAL RAILROAD COMPANY,
By STUYVESSANT FISH, *President.*

Attest:
A. J. HACKSTAFF, *Secretary.*

Signed sealed and delivered by the Illinois Central Railroad Company in the presence of
NOEL GALE,
29 *Nassau Street, New York.*

[CORPORATE SEAL.]

THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY,
By R. FULTON CUTTING, *Vice President.*

Attest:
EDWARD F. LEONARD, *Secretary.*

Signed, sealed and delivered by the Belleville and Southern Illinois Railroad Company in the presence of
R. J. FOX,
111 *Broadway, New York.*

STATE OF MISSOURI, *City of St. Louis, ss:*

I, H. H. Buford, a Notary Public duly appointed and residing within the said City of St. Louis, do hereby certify that Clarence F. Parker, the President of the St. Louis, Alton and Terre Haute Railroad Company and Edward F. Leonard, the Secretary of the same Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, and to be such President and Secretary appeared before me this day in person and acknowledged that they signed

sealed and delivered the said instrument as the free and voluntary act of said The St. Louis, Alton and Terre Haute Railroad Company, and as their own free and voluntary act as such President and Secretary of the said Company respectively, for the uses and purposes therein set forth.

And the said Clarence F. Parker and Edward F. Leonard being be me severally duly sworn, each for himself, do- depose and
45 say, the said Clarence F. Parker that he is the President of the St. Louis, Alton and Terre Haute Railroad Company, the lessor in the foregoing instrument, and the said Edward F. Leonard, that he is secretary of the same company, that the seal affixed to the foregoing instrument is the genuine corporate seal of the said company, that it was affixed thereto by order of the Board of Directors of the said Company, and that they signed their names thereto by like order as president and secretary of the said Company respectively. Given under my hand and official seal at St. Louis aforesaid this third day of April A. D. 1896.

H. H. BUFORD,
Notary Public, City of St. Louis, Mo.

My term expires May 25, 1897.

STATE OF MISSOURI, *City of St. Louis, ss:*

I, Thomas B. Rodgers, Clerk of the Circuit Court, City of St. Louis, the same being a court of record in and for the said City and State certify that H. H. Buford whose name is subscribed to the proof of acknowledgment of the annexed instrument dated April 3rd 1896 was on said date a Notary Public in and for said city duly commissioned qualified and sworn and authorized by the laws of this state to administer oaths and take the acknowledgments of deeds, that I am well acquainted with his handwriting and verily believe that the signature thereto is genuine and that to all such his official acts full faith and credit are and ought to be given.

In testimony whereof I hereunto set my hand and affix the seal of said court at office in the city of St. Louis this fourth day of April eighteen hundred and ninety six.

[CIRCUIT COURT SEAL.] THOMAS B. RODGERS,
Clerk Circuit Court.

STATE OF NEW YORK, *City and County of New York, ss:*

I, Charles P. Holland, a Notary Public duly appointed and residing within the said city of New York do hereby certify that Stuyvessant Fish the President of the Illinois Central Railroad Company and A. G. Hachstaff the secretary of the same company personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary and to be such President and Secretary appeared before me this day in person and acknowledged that they signed, sealed and delivered
46 said instrument as the free and voluntary act of the Illinois Central Railroad Company and as th-ir own free and volun-

tary act as such President and Secretary of the said Company respectively for the uses and purposes therein set forth. And the said Stuyvessant Fish and A. G. Hackstaff being by me severally duly sworn, each for himself do depose and say — the said Fish that he is the President of the Illinois Central Railroad Company the Lessee in the foregoing instrument and the said Hackstaff that he is secretary of the same company that the seal affixed to the foregoing instrument is the genuine corporate seal of the said company, that it was affixed thereto by order of the Board of Directors of the said Company and that they signed their names thereto by like order as President and Secretary of the said Company respectively. Given under my hand and official seal at the City of New York aforesaid this first day of April A. D. 1896.

[NOTARIAL SEAL.] CHARLES P. HOLLAND,
Notary Public.

STATE OF NEW YORK, *City and County of New York, ss:*

I, Robert J. Fox, a Notary Public, duly appointed and residing within the said city of New York do hereby certify that R. Fulton Cutting the Vice President of the Belleville and Southern Illinois Railroad Company and Edward F. Leonard the Secretary of the same Company personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Secretary and to be such Vice President and Secretary appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as the free and voluntary act of said the Belleville and Southern Illinois Railroad Company and as their own free and voluntary act as such Vice-President and Secretary of the said Company respectively for the uses and purposes therein set forth. And the said R. Fulton Cutting and Edward F. Leonard being by me severally duly sworn each for himself do depose and say the said R. Fulton Cutting that he is the Vice President of the Belleville and Southern Illinois Railroad Company the party of the third part in the foregoing instrument the Edward F. Leonard that he is secretary of the same company that the seal affixed to the foregoing instrument is the genuine corporate seal of the said company that it was affixed thereto by order of the Board of Directors of the said company and that they signed their names thereto by like order as Vice President and Secretary of the said company respectively.

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Given under my hand and official seal at the City of New York aforesaid this 7th day of April A. D. 1896.

[NOTARIAL SEAL.] R. J. FOX,
Notary Public, N. Y. Co.

Filed for record April 11th 1896 at 10 o'clock A. M.

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Herman B. Roewe, Recorder of deeds in and for said County of St. Clair and State of Illinois, do certify the foregoing to be a true

and correct copy of lease from St. Louis Alton and Terre Haute R. R. *et al.* to Illinois Central R. R. Co. as the same appears of record in my office in Belleville Book 244 page 516, of said St. Clair County Records. And I further certify that I am the custodian of said records.

In testimony whereof, I hereunto set my hand and affix the seal of said office, in Belleville, Illinois, this 27th day of January A. D. 1905.

[SEAL.] HERMAN B. ROEWE, *Recorder.*

Endorsed: Filed Aug. 24, 1905. Daniel Hogan, Clerk. By A. S. Hamilton, Deputy.

48 EXHIBIT B.

This Indenture made this 10th day of September in the year of our Lord, one thousand eight hundred and ninety-seven by and between The Belleville and Southern Illinois Railroad Company a corporation created by and existing under and by virtue of the laws of the State of Illinois, party of the first part and the St. Louis, Alton and Terre Haute Railroad Company, a corporation also created by and existing under and by virtue of the laws of the same State, party of the second part, Witnesseth:

That the said party of the first part for the considerations hereinafter mentioned and for the purpose of carrying into effect a contract of purchase and sale agreed upon between the Directors and approved by the Stockholders of each of the respective corporations parties hereto such stockholders owning more than two thirds in amount of the capital stock of said respective corporations at special meetings duly called and holden in the City of Chicago County of Cook and State of Illinois on the ninth day of September A. D. 1897 doth by these presents grant, bargain, sell, assign, transfer and convey to the said party of the second part its successors and assigns forever all the railway property corporate rights and franchises of the said party of the first part, including its line of railroad extending from Belleville in St. Clair County in the State of Iliinois to Duquoin in Perry County in the said State a distance of fifty six miles more or less being the line of railroad heretofore demised by the party of the first part to the party of the second part by a certain indenture of lease being date October 1, 1866 as modified by a certain agreement between the parties hereto bearing date of June 10th 1882 and as further modified by a certain other agreement between said parties bearing date December 10th, 1886 and as further modified by a certain other agreement between said parties bearing date October 1st 1895 and which Railroad has been and is now in possession of and operated in connection with the Railway line of the party of the second part, under the said lease and the said sundry supplementary agreements relating thereto; together with the tracks and roadway thereof and all and singular the right of way of said party of the first part and the lands real estate, easements, and other rights
49 or interests in or pertaining to lands all tracks, sidings, switches, branches, bridges, viaducts, culverts, fences, station

houses, terminals, shops, warehouses, car houses, freight houses, coal chutes, water tanks, elevators, and all other buildings, erections, and structures and all fixtures and appurtenances in any wise appertaining to the said Railroad, or held or acquired or used or intended for use for the purpose of or in connection with the said Railroad, or the operation or maintenance thereof; and also all and singular the locomotives, engines, tenders, cars, and other rolling stock and equipment tools, implements, machinery stationary, furniture, fuel, material and all other supplies for constructing, operating, repa-ring, or replacing the said Railroad, its equipments or appurtenances of any part thereof and all other the railway property corporate rights and franchises of the party of the first part, now held or owned by it and all the rents, issues, tolls, incomes, earnings, and profits thereof, including also all the rights, privileges, immunities and franchises whatsoever of the said party of the first part pertaining to the property hereby conveyed or any part thereof and all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part of in and to the premises and property above described and every part and parcel thereof with the appurtenances. To have and to hold the said property rights, privileges, immunities and franchises and all and singular the above mentioned and described premises and every part thereof with the appurtenances unto the said party of the second part its successors and assigns forever.

The said premises are conveyed subject to the mortgage heretofore made by the party of the first part to Robert Bayard and Samuel J. Tilden Trustees bearing date October 1, 1866 to secure the payment of certain corporate bonds of the party of the first part therein described to the amount of $1,100,000 par value of principal $998,000 of which are still outstanding and unpaid. In consideration of this conveyance the party of the second part has covenanted and agreed and does hereby covenant and agree as follows:

First. That it the party of the second part shall assume and hereby does assume the payment of the principal and interest of the outstanding bonds of the party of the first part secured by the aforesaid mortgage, of October 1, 1866 to Robert Bayard and Samuel J. Tilden Trustee, which bonds now outstanding amount in the aggregate to the sum of $998,000 par value of principal and that it shall indemnify the party of the first part and save it harmless in respect thereof.

Second. That it, the party of the second part will execute and deliver to the party of the first part One Million Four Hundred Thousand Dollars: $1,400,000: par value of the bonds of the party of the second part due and maturing July 1, 1951, bearing interest at the rate of four per cent. per annum payable semi-annually both principal and interest payable in gold coin of the United States of or equal to the present standard of weight and fineness.

Third. That it, the party of the second part shall assume and hereby does assume all and singular the covenants, agreements and obligations on the part of the party of first part to be kept, performed, and observed under and by virtue of a certain indenture of

lease bearing date October 1, 1895 whereby the Railroad of the party of the first part together with other Railroads were demised to the Illinois Central Railroad Company for the term of 99 years then next ensuing and also under and by virtue of a certain indenture in the nature of a mortgage or deed of trust bearing date January 1, 1896 by and between The Illinois Central Railroad Company as party of the first part; the United States Trust Company of New York as Trustee and party of the second part and the St. Louis, Alton and Terre Haute Railroad Company and The Belleville and Southern Illinois Railroad Company as the parties of the third part. Reference is hereby made to said last two mentioned indentures and their record for a complete exposition of the rental obligations thereby created in favor of the preferred stockholders of the party of the first and the said party of the second part hereby covenants and agrees that said obligations shall be faithfully performed carried out and discharged so far as the same are applicable to either of the parties hereto.

But it is expressly agreed between the parties hereto that The Belleville and Southern Illinois Railroad Company shall have no lien, charge nor claim for the payment of said bonds, principal or interest upon the railway property corporate rights or franchises hereby sold and conveyed but that every interest, lien, charge or claim of said mentioned Railroad Company in or upon said property corporate rights and franchises shall be forever waived, barred and ex-
51 tinguished upon this conveyance. And the said party of the first part hereby covenants with the party of the second part its successors and assigns that it the party of the first part and every corporation or person having or lawfully or equitably claiming any estate, right, title or interest in or to the above granted premises will on demand at any and all times hereafter make and execute and deliver all such further assurances for the further or more perfect or satisfactorily assuring and confirming all or any part of the said premises unto the said party of the second part its successors or assigns as by it or them shall be reasonably required.

In Witness Whereof the said parties of the first and second parts have caused these presents to be signed executed acknowledged and delivered in their names and behalf by their respective Presidents and their corporate seals attested by their respective Secretaries to be hereto affixed on the day and year first above written in duplicate.

THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY,
By J. C. WELLING, *Vice-President.*

Attest: A. G. HACKSTAFF, *Secretary.*

[CORPORATE SEAL.]

THE ST. LOUIS, ALTON AND TER-E HAUTE RAILROAD COMPANY,
By STUYVESANT FISH, *President.*

Attest: W. G. BRUEN, *Secretary.*

STATE OF ILLINOIS, *County of Cook, ss:*

I, David W. Ross, a Notary Public, in and for said County and State do hereby certify that John C. Welling, Vice-President of the above named Belleville and Southern Illinois Railroad Company and Alexander G. Hackstaff, Secretary of the said corporation severally personally known to me to be the same persons whose names are severally subscribed to the foregoing instrument as such Vice President and Secretary respectively and to be respectively such Vice President and Secretary appeared before me this day in person and severally acknowledged that they signed, sealed and delivered the said instrument as the free and voluntary act of said corporation and he, the said John C. Welling as his own free and voluntary act as such Vice President and he the said Alexander G. Hackstaff as his own free and voluntary act as such Secretary for the uses and
52 purposes therein set forth.

Given under my hand and Official Seal this 14th day of September A. D. 1897.

DAVID W. ROSS,
Notary Public.

[NOTARIAL SEAL.]

STATE OF ILLINOIS, *County of Cook, ss:*

I, David W. Ross, a Notary Public in and for said County and State do hereby certify that Stuyvesant Fish, President of the above named The St. Louis, Alton and Terre Haute Railroad Company and William G. Bruen, Secretary of the said corporation severally personally known to me to be the same persons whose names are severally subscribed to the foregoing instrument as such President and Secretary, respectively and to be respectively such President and Secretary, appeared before me this day in person and severally acknowledged that they signed sealed and delivered the said instrument as the free and voluntary act of said corporation and he the said Stuyvesant Fish, as his own free and voluntary act as such President, and that he the said William G. Bruen, as his own free and voluntary act as such Secretary for the uses and purposes therein set forth.

Given under my hand and Official Seal this 14th day of September, A. D. 1897.

DAVID W. ROSS,
Notary Public.

[NOTARIAL SEAL.]

Filed for record, October 28th A. D. 1897 at 10:30 o'clock, a. m.

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Herman B. Roewe, Recorder of Deeds in and for said County of St. Clair and State of Illinois, do certify the foregoing to be a true and correct copy of Agreement from St. Louis, Belleville and Southern to St. Louis, Alton and Terre Haute R. R. as the same appears of record in my office in Belleville Book 252, page 281, of said St. Clair County Records. And I further certify that I am the custodian of said Records.

In testimony whereof, I hereunto set my hand and affix the seal of said office, in Belleville Illinois, this 27th day of January, A. D. 1905.

HERMAN B. ROWE,
Recorder,
[SEAL.] By —— -——, *Deputy.*

Endorsed: Filed August 20, 1905. Daniel Hogan Clerk. By A. S. Hamilton, Deputy.

53 EXHIBIT C.

This supplemental Indenture dated the fifteenth day of September A. D. 1897, by and between the St. Louis, Alton and Terre Haute Railroad Company, a corporation created and organized under and by virtue of the laws of the State of Illinois; hereinafter called the "Terre Haute Company;" party of the first part, and the Illinois Central Railroad Company, also a corporation created and organized under and by virtue of the laws of the State of Illinois, (hereinafter called the "Illinois Central Company") party of the second part.

Whereas by a certain indenture of lease dated October 1, 1895 the Terre Haute Company did grant, demise let and lease unto the Illinois Central Company for the term of ninety-nine years from the said first day of October 1895, the line of railroad of the Terre Haute Company and certain other lines of railroad leased to and in possession of the Terre Haute Company (hereinafter called the Terre Haute leased lines) namely the railroads of the Belleville and Southern Illinois Railroad Company, The Belleville and El-rado Railroad Company, The Belleville and Carondelet Railroad Company, The St. Louis Southern Railroad Company, The Carbondale and Shawneetown Railroad Company and the Chicago, St. Louis and Paducah Railway Company.

And Whereas, since the date of the said Indenture of lease the Terre Haute Company with the consent of the Illinois Central Company has become the owner and seized in fee simple of all the said other lines of railway under and by virtue of certain deeds of conveyance thereof as follows:

Of the Belleville and the Southern Illinois Railroad by deed dated September 10, 1897, of the Belleville and Eldorado Railroad by deed dated September 10, 1897, of the Belleville and Carondelet Railroad by deed dated September 10, 1897, of the St. Louis Southern Railroad by deed dated September 10, 1897, of the Carbondale and Shawneetown Railroad by deed dated September 10, 1897, and of the Chicago, St. Louis and Paducah Railway by deed dated September 10, 1897.

And Whereas in consideration of the conveyance in fee simple of said Railroads the Terre Haute Company has assumed certain series of first mortgage bonds of said leased lines, aggregating
54 $3,503,000. par value secured by first mortgages on said respective railroads and has also assumed certain series of sec-

ond mortgages or consolidated or income bonds, of said leased lines, aggregating $1,855,000 par value secured by second mortgage lien thereon.

And Whereas in and by said indenture of lease of October 1, 1895, the Illinois Central Company covenanted and agreed to pay and discharge all rents, expenses, claims, and demands whatsoever arising out of the maintenance, management and operation of the railroads and properties of the Terre Haute Company, and its leased lines, which covenant and agreement included the rental obligations of the Terre Haute Company in respect of its said leased lines.

And Whereas, in and by said indenture of lease October 1, 1895 the Illinois Central Company further covenanted and agreed to pay as additional rent the interest falling due during the continuance of said lease on the outstanding bonds of the Terre Haute Company and of the Belleville and Southern Illinois Railroad Company, or any bonds, issued in renewal or extension thereof, and any other bond of either of said Companies which might be issued with the consent of the Illinois Central Company, and covenanted and agreed upon the maturity of any of said bonds to cause the same to be extended or renewed at the rate of interest not greater than the rate already payable thereon or to cause the same to be taken up or paid or exchanged for the bonds, all as will more full- appear by said lease of October 1, 1895, to which and the record thereof reference is made for its terms and provsions:

And Whereas, first mortgage bonds of the Terre Haute Company amounting in the aggregate to $2,500,000 par value, and bearing interest at the rate of five per cent. per annum, will become due and payable on the first day of June, 1898, and first mortgage bonds of the said The Belleville and Southern Illinois Railroad Company amounting in the aggregate to 998,000 par value and bearing interest at the rate of eight per cent. per annum, became due and payable on the first day of October, 1896 but were extended for one year until the first day of October 1897, with interest during such extended period at the rate of five per cent. per annum, and are now unpaid; and first mortgage bonds of the said The Chicago, St. Louis and Paducah Railway Company amounting in the aggregate to the sum of $1,000,000 par value, and bearing interest at the rate
55 of five per cent. per annum, became due and payable on the first day of September, 1897, and are now unpaid;

And Whereas, it is necessary to pay or fund said bonded indebtedness of the said Terre Haute Company and of said leased lines so assumed by it, and to fund the obligation of the Illinois Central Company in respect of said indenture of lease of October 1, 1895, and the Terre Haute Company is unable to obtain or borrow the funds necessary for such purpose or to fund said indebtedness at any advantageous rate of interest and such funding is necessary to protect and preserve said leasehold of the Illinois Central Company under the indenture of October 1, 1895;

And Whereas the Illinois Central Company has heretofore acquired various bonds and shares of Capital Stock of the said Terre Haute Company, and of said leased lines, and has deposited the same under

a certain deed of trust and mortgage, dated January 1, 1896, executed by the Illinois Central Company, of the first part, the United States Trust Company of New York, of the second part, and said Terre Haute Company, and the Belleville and Southern Illinois Railroad Company of the third part, to secure an authorized issue of $15,000,000 of bonds as will more fully appear by said deed of trust and mortgage of January 1, 1896, to which and the record thereof reference is made for its terms and provisions;

And Whereas the parties hereto, in consideration of this indenture, and for other considerations, have executed simultaneously herewith to the said United States Trust Company of New York, a supplemental deed of trust and mortgage bearing the date hereof, viz: September 15, 1897, to further secure said authorized issue of $15,000,000 of bonds as will more fully appear by said deed of trust and mortgage to which and the record thereof reference is made for its terms and provisions;

And Whereas, 33,907 shares of the Capital Stock of the Terre Haute Company and all the shares of the Capital Stock of the Belleville and Southern Illinois Railroad Company have been deposited and pledged under said deed of trust and mortgage of January 1, 1896;

Now therefore, this Indenture Witnesseth, that the said The St. Louis, Alton, and Terre Haute Railroad Company, for and in consideration of the premises, and of the rents and covenants, hereinafter reserved and contained on the part of the Illinois Central
56 Company, to be paid, kept and performed, has granted, demised, let and leased and does by there presents grant, demise, let and lease unto the said Illinois Central Company its successors and assigns, all and singular the railroad premises and property of it, the Terre Haute Company, situated, lying and being in the State of Illinois originally owned or demised and conveyed to the Terre Haute Company as aforesaid, and of which it is now seized being the railroad extending from East St. Louis to Belleville in the County of St. Clair and including the terminals of East St. Louis, also the railroad formerly of the Belleville and Southern Illinois Railroad Company, extending from Belleville, in St. Clair County to Duquoin in Perry County, also the railroad formerly of the Belleville and Carondelet Railroad Company, extending from Belleville to a point on the Mississippi River, opposite South St. Louis by the way of East Carondelet all in the same County of St. Clair; also the railroad formerly of The St. Louis Southern Railroad Company, extending from Pickneyville in Perry County to Carbondale in Jackson County, with a branch therefrom to Murphysboro in said County, and including all the leasehold, interest and estate formerly of the St. Louis Southern Railroad Company in the Carbondale and Shawneetown Railroad; also the railroad formerly of the Carbondale and Shawneetown Railroad Company extending from Carbondale in Jackson County to Marion in Williamson County; also the railroad formerly of the Chicago, St. Louis and Paducah Railway Company, extending from Marion, in Williamson County to Brooklyn in Massac County, all of said railroads together comprising in length about 239 miles, more or

less. Together with all the branches, additions, sidings, switches, and turnouts of the said railroads and of each of them, including all lands, rails bridges, viaducts, culverts, fences, roadways, right of way, stations, offices, depots, depot grounds, workshops, machine-shops, machinery, engine-houses, freight and station houses, warehouses, elevators and other structures, now held or acquired, or hereafter to be held or acquired for use in connection with the said railroads or any of them, or the business thereof, and also all the corporate rights, privileges and franchises of it the said Terre Haute Company and all
the easements, property rights and things of whatever name
57 and nature conected with or relating to the said railroads, or
the construction, ma-tenance and use thereof, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and all and singular the property of the Terre Haute Company, real and personal of whatever kind and description and wheresoever situated now owned or held by the Ther-e Haute Company, or which may hereafter be acquired, owned or held by it for the use of the said railroad or leased lines or otherwise, or in connection with the working, maintenance and operation of the same, and including all locomotives tenders, stationary engines, cars, trucks, push cars, hand cars and all other rolling stock and equipment, and all the tools, impliments, machinery, wood, coal, oil and other supplies now owned held or possessed by the said Terre Haute Company, or which may be hereafter owned, acquired, held or possessed by it for use in connection with the said railroad or in connection with the working maintenance, and operation of the same or either of them; and also all rights, powers, privileges and franchises now owned or possessed by or reserved to the said the Terre Haute Company in connection with the said property, railroads, leased lines, telegraph lines or otherwise or any part thereof, together with the tolls, issues and earnings, income and profits of all the said property hereby demised and each and every part thereof.

To have and to hold the said railroads, premises, property and appurtenances, together with the tolls issues, earnings income and profits thereof, unto said Illinois Central Company, its successors and assigns for its and their own proper use and benefit as lessee for the term of ninety-nine years from the first day of October in the year 1895, and the Terre Haute Company does hereby ratify, establish and confirm in all respects, the said indenture of lease dated October 1st. 1895, and the estate, right, title and interest of the Illinois Central Company thereunder except as herein expressly modified, and the Illinois Central Company during the said term shall have the sole and exclusive right, power and authority to hold, keep, use, enjoy, control, manage and operate said railroads and property, and to regulate, fix, vary, demand, collect, receive and dispose of all and every the rates, tolls, issues, earnings, income, profits, revenues and charges accrued or to accrue thereon or therefrom; the Illinois Central Com-
pany yielding and paying for all and singular said premises
58 to the Terre Haute Company, its successors and assigns, at
the time and in the manner hereinafter provided, the rents hereinafter specified, and keeping and performing all and singular

the covenants and agreements hereinafter or in said indenture of lease of October 1, 1895, set forth to be kept and performed by it, except as herein expressly modified.

This indenture further witnesseth that in consideration of the premises the Illinois Central Company covenants and agrees to advance and loan to the Terre Haute Company or cause to be
59 advanced and loaned to it, any and all sums necessary to pay and discharge the said first mortgage bonds of the Terre Haute Company and of its said leased lines, now due or hereafter to become due, amounting to $2,500,000 par value of the bonds of the Terre Haute Company, and $3,503,000 par value of the bonds of said leased lines, assumed by it and that the said Illinois Central Company shall be entitled to have certified and delivered to it for each $1,000 par value of said first mortgage bonds so paid and discharged $1080 in new bonds to be secured and issued under said deed of trust and mortgage of January 1, 1896, and said supplemental deed of trust and mortgage bearing even date and recorded herewith. The Illinois Central Company further covenants and agrees to advance or loan or cause to be advanced or loaned to the Terre Haute Company additional funds for them purposes mentioned in subdivision 2 of Article Second of said supplemental deed of trust and mortgage.

This Indenture further witnesseth that the Illinois Central Company covenants and agrees to pay as rental for said premises the interest accruing on all of the bonds which may be issued and outstanding at any time under said deeds of trust of January 1, 1896, and September 15, 1897 as aforesaid, in addition to all and singular the taxes, operating expenses, costs and damages, claims and demands whatsoever which shall or may arise out of the maintenance, management and operation of the railroad and property of the Terre Haute Company and of the said leased lines.

The Illinois Central Company also covenants and agrees to pay to the holders of the Capital Stock of the Terre Haute Company who have not deposited under said deed of trust of January 1, 1896 or may not hereafter deposit and take bonds in exchange for their stock, the sum of two and one half per cent. per annum on the par value of any and all outstanding stock during the continuance of said lease and covenants and agrees that such outstanding stock may be at any time deposited in exchange for new three per cent. bonds as in said deeds of trust provided.

This Idenfure further witnesseth that the Terre Haute Company Covenants and agrees to pay or cause to be paid to the Illinois Central Company its successors or assigns on the first day of July 1951 or at the earlier maturity of the bonds issued and to be issued under said deeds of trust or earlier termination of this lease, the
60 principal amount of any three and one half per cent. bonds issued and outstanding under said deeds of trust amounting to the authorized aggregate of ten million dollars, ($10,000,000) and that the Illinois Central Company shall have a lien and charge upon the property of the Terre Haute Company hereby leased to secure the repayment and reimbursement to it of the amount of the said bonds and shall have the right to retain and hold possession of said

property until the payment of such amount to it or its successors or assigns. The first issue of five million dollars of bonds numbered from 1 to 5,000 inclusive issued under said deeds of trust, bearing interest at the rate of three per cent. per annum shall not be payable by the said Terre Haute Company to the Illinois Central Company or its successors or assigns, but shall represent funded and additional rent payable by the Illinois Central Company under said Indenture of October 1st, 1895, under this indenture, unless the said lease of said premises to the Illinois Central Company shall be terminated for any cause whatsoever before the end of the said term of ninety-nine years in which event the said Terre Haute Company shall become bound and hereby covenants and agrees to pay to the Illinois Central Company, its successors or assigns the sum of three million five hundred thousand dollars if the lease be terminated prior to July 1, 1951, and to pay the sum of two million dollars if the lease terminated at any time after said last mentioned date and prior to July 1 1976, and the Illinois Central Company shall have a lien and charge upon said property to secure such payment and the right to retain and hold possession as aforesaid until such payment.

This indenture of lease as well as said lease of October 1, 1895 and the leasehold or other interest of the Illinois Central Company in the premises shall be subject in all respects to the prior lien of said deeds of trust of January 1, 1896 and September 15, 1897.

In Witness Whereof the partie- hereto of the first and second parts have duly caused these presents to be signed by their respective Presidents or Vice Presidents and their corporate seals to be hereto affixed, attested by their Secretaries, the day and year first above written, these presents being executed and delivered in ten counterparts or originals for convenience of record, but all constituting one instrument.

61 [CORPORATE SEAL.] THE ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY,
By J. C. WELLING, *Vice President.*

Attest:
W. G. BRUEN, *Secretary.*

Signed, sealed and delivered on behalf of the St. Louis, Alton and Terre Haute Railroad Company in the presence of
NOEL GALE,
40 *Wall Street, New York.*

[CORPORATE SEAL.] ILLINOIS CENTRAL RAILROAD COMPANY,
By STUYVESANT FISH, *President.*

Attest:
A. G. HACKSTAFF, *Secretary.*

Signed, sealed and delivered on behalf of the Illinois Central Railroad Company in the presence of
WM. D. GUTHRIE,
40 *Wall Street, New York.*

STATE OF NEW YORK, *City and County of New York, ss:*

I, Edwin F. Corey, a Notary Public in and for the City and County of New York, in the State aforesaid duly commissioned and sworn, and a Commissioner of Deeds in and for the State of New York, duly appointed and Commissioned as such by the executive authority and under the laws of the State of Illinois to take acknowledgement of Deeds, etc., to be used or recorded in said States respectively, being now duly qualified to act as such for each of said States and a resident in the said State, City and County of New York, do hereby certify that John C. Welling, Vice President of the St. Louis, Alton and Terre Haute Railroad Company and William G. Bruen, Secretary of the said Corporation severally personally known to me to be the same persons whose names are severally subscribed to the foregoing instrument as such Vice President and Secretary respectively and to be respectively such Vice President and Secretary appeared before me this day in person and severally acknowledged that they signed, sealed, executed and delivered the said instrument as the free and voluntary act of the said corporation and he the said John C. Welling as his own free and voluntary act as such Vice President and he the said William G. Bruen as his own free and voluntary act as such Secretary for the uses and purposes therein set forth.

And the said John C. Welling and William G. Bruen, being by me duly severally sworn, did depose and say that they resided in the City of Chicago, Illinois, and that he the said John C. Welling and he the said William G. Bruen are respectively the Vice President and Secretary of said The St. Louis, Alton and Terre Haute Railroad Company, the corporation described in and which executed the above instrument that they knew the corporate seal of said Corporation that the seal affixed to said instrument was such corporate seal that it was so affixed by order of the Board of Directors of said corporation and that they signed their names thereto by like order.

62

Given under my hand and seals of office this fourth day of October one thousand eight hundred and ninety seven.

[NOTARIAL SEAL.] EDWIN F. COREY,
Notary Public, City and County of New York.

[COMMISSIONER'S SEAL.] EDWIN F. COREY,
Commissioner of Deeds for the State of Illinois.

STATE OF NEW YORK *City and County of New York, ss:*

I, Edwin F. Corey, a Notary Public in and for the City and County of New York, in the State aforesaid duly commissioned and sworn and a commissioner of Deeds in and for the State of New York, duly appointed and commissioned as such by the executive authority and under the laws of the State of Illinois to take acknowledgement of deeds etc., to be used and recorded in said State respectively, being now duly qualified to act as such for each of said States and a resident in the said State, City and County of New York, do hereby certify that Stuyvesant Fish, President of the Illinois Central Railroad Company and Alexander G. Hackstaff, Secretary

of said corporation severally known to me to be the same persons whose names are severally subscribed to the foregoing instrument as such President and Secretary, respectively and to be respectively such President and Secretary appeared before me this day in person and severally acknowledged that they signed, sealed, executed and delivered the said instrument as the free and voluntary act of the said corporation and he the said Stuyvesant Fish, as his own free and voluntary act as such President, and he the said Alexander G. Hackstaff, as his own free and voluntary act as such Secretary, for the uses and purposes therein set forth.

And the said Stuyvesant Fish, and Alexander G. Hackstaff, being by me severally duly sworn did depose and say that he the said Stuyvesant Fish resided in the City of New York, N. Y.
63 and that he the said Alexander G. Hackstaff resided in the City of Morristown, New Jersey, *and* that he the said Stuyvesant Fish, and he the said Alexander G. Hackstaff are respectively the President and Secretary of the said Illinois Central Railroad Company, the corporation described in and which executed the above instrument, that they *knew* the corporate seal of said corporation that the seal affixed to said instrument was such corporate seal, that it was so affixed by order of the Board of Directors of said corporation and that they signed their names thereto by like order.

Given under my hand and Seals of Office this fourth day of October one thousand eight hundred and ninety seven.

[NOTARIAL SEAL.] EDWIN F. COREY,
Notary Public, City and County of New York.

[COMMISSIONER'S SEAL.] EDWIN F. COREY,
Commissioner of Deeds for the State of Illinois.

STATE OF NEW YORK *City and County of New York, ss:*

I, Henry D. Purroy, Clerk of the City and County of New York, and also clerk of the Supreme Court for the said City and County the same being a Court of Record do hereby certify that Edwin F. Corey whose name is subscribed to the certificate of the proof or acknowledgement of the annexed instrument and thereon written was at the time of taking such proof or acknowledgement a Notary Public in and for the City and County of New York, dwelling in the said City, commissioned and sworn and duly authorized to take the same. And further that I am well acquainted with the handwriting of such Notary and verily believe that the signature to the said certificate of proof or acknowledgement is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said Court and County the fourth day of October, 1897.

[NEW YORK COUNTY COURT SEAL.]

HENRY D. PURROY, *Clerk.*

Filed for Record October 11th, 1897 at 8:30 o'clock A. M.

64 STATE OF ILLINOIS, *St. Clair County, ss:*

I, Herman B. Roewe, Recorder of Deeds in and for said County of St. Clair and State of Illinois, do certify the foregoing to be a true and correct copy of Supplemental lease from St. Louis, Alton and Terre Haute R. R. to Illinois Central R. R. Co., as the same appears of record in my office in Belleville Book 234, page 621, of said St. Clair County Records. And I further certify that I am the custodian of said Records.

In testimony whereof, I hereunto set my hand and affix the seal of said office, in Belleville, Illinois, this 27th day of January, A. D. 1905.

[SEAL.] HERMAN B. ROEWE, *Recorder,*
By —— ——, *Deputy.*

65 EXHIBIT D.

X-15137. Contract 7788.

This Indenture made this Seventeenth day of February, A. D. One Thousand nine hundred and four (1904) by and between the St. Louis, Alton and Terre Haute Railroad Company, hereinafter called the Terre Haute Company, party of the first part and the Illinois Central Railroad Company, party of the second part, witnesseth:

That Whereas the party of the first part, by indenture on the first day of October 1895 and by supplement indenture on the fifteenth day of September, 1897, demised to the party of the second part the railway property, corporate rights and franchises hereinafter conveyed for the term of ninety-nine years, from and after the first day of October 1895, and the party of the second part is now in possession of and operating the said demised railroad under the said lease in connection with or extension of its own railway lines, the said railroad hereinafter conveyed connecting with the railroad of the party of the second part:

And Whereas, it has been mutually agreed between the parties hereto that the party of the first part should sell and convey all its remaining right, title, interest and estate in and to said railway property, corporate rights and franchises of the party of the first part to the party of the second part its successors and assigns and receive in payment therefor the sum of Two Million Three Hundred and Forty two Thousand Seven hundred and ninety Dollars ($2,342,790) and

Whereas, by the said supplemental indenture dated September 15th 1897 the party of the first part covenanted to pay or cause to be paid to the party of the second part, its successors and assigns on the first day of July, 1951, or at the earlier maturity of the bonds issued under the deeds of trust dated January 1st, 1896 and September 15th, 1897, commonly known as the St. Louis Division Mortgage and Supplemental Mortgage respectively to both of which said mortgages the parties of this instrument were also parties: or earlier termination of the said lease dated September 15, 1897 the

principal amount of any three and one half per cent. bonds issued and outstanding under said deeds of trust amounting to the
66 authorized aggregate of Ten Million Dollars, ($10,000,000) and the party of the second part was granted a lien and charge upon the property of the party of the first part thereby leased to secure the repayment and reimbursement to it of the amount of the said bonds and the right to retain and hold possession of the said property until the payment of such amount to the party of the second part or its successors and assigns and it was further provided that in case the said lease of said premises to the party of the second part should be terminated for any cause whatsoever before the end of the said term of ninety-nine years, the party of the first part should become bound and thereby covenanted and agreed to pay to the party of the second part its successors and assigns the sum of Three Million Five Hundred Thousand Dollars, ($3,500,000) if the said lease should be terminated prior to July first 1951, and the party of the second part was granted a lien and charge upon said property to secure such payment and the right to retain and hold possession until such payment was made;

And Whereas, it is the intent of the parties hereto to terminate the said lease and thereby to mature the obligations of the party of the first part hereinbefore recited and provided to take effect upon the termination of the said lease the parties hereto further intending that the effect of this conveyance shall be conditioned upon the maturity of the said obligation or so much thereof as shall equal the said consideration of Two Million Three Hundred and Forty-two Thousand Seven Hundred and Ninety Dollars, ($2,342,790) and that the said consideration shall be payable only as a credit upon the said obligations so becoming matured and effective; and that otherwise this conveyance shall be of no effect.

Now Therefore for and on account of the consideration aforesaid the receipt of which is hereby acknowledged the party of the first part hereby grants, bargains, sells, assigns, transfers and conveys to the party of the second part, its successors and assigns forever all the Railway Property, corporate rights and franchises so heretofore leased and next hereinafter described, and all the remaining right, title, interest and estate of the party of the first part therein, viz:

The Railroad Premises and property of it The Terre Haute Company situated lying and being in the State of Illinois, originally owned by or demised and conveyed to The Terre Haute Com-
67 pany and of which it is now seized, being the railroad extending from East St. Louis to Belleville in the County of St. Clair and including the terminals of East St. Louis; also the railroad formerly of the Belleville and Southern Illinois Railroad Company, extending from Belleville in St. Clair County to Duquoin in Perry County; also the railroad formerly of the Belleville and Eldorado Railroad Company, extending form Duquoin in Perry County to Eldorado in Saline County; also the Railroad formerly of the Belleville and Carondelet Railroad Company extending from Belleville to a Point on the Mississippi River opposite South St. Louis,

by way of East Carondelet, all in the County of St. Clair also the Railroad formerly of the St. Louis Southern Railroad Company extending form Pickneyville in Perry County to Carbondale in Jackson County, with a branch therefrom to Murphysboro in said County and including all the lease hold, interest and estate formerly of the St. Louis Southern Railroad Company in the Carbondale and Shawneetown Railroad; also the Railroad formerly of the Carbondale and Shawneetown Company, extending from Carbondale in Jackson County to Marion in Williamson County, also the Railroad formerly of the Chicago, St. Louis and Paducah Railway Company, extending from Marion in Williamson County to Brooklyn in Massac County all of said Railroads together comprising in length about 239 miles more or less, together with all the branches, additions, sidings, switches, and turnouts of the said Railroads and of each of them including all lands, rails, bridges, viaducts, culverts, fences, roadways, rights of way, stations, offices, depots, depot grounds, workshops, machine shops, machinery, engine houses, freight and station houses, warehouses, elevators, and other structures now held or acquired or hereafter to be held or acquired for use in connection with said railroads or any of them or the business thereof and also all the corporate rights, privileges and franchises of it the said Terre Haute Company and all the easements, property rights and things of whatsoever name and nature connected with or relating to the said Railroad or to the construction, maintenance of use thereof, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and all and singular the property of the Terre Haute Company, real and personal, of whatever kind and description and wheresoever situated now owned or held by the Terre Haute Company or which may hereafter be acquired, owned or held by it for the use of said Railroad
68 or leased lines or otherwise or in connection with the working, maintenance and operation of the same and including all locomotives, tenders, stationary engines, cars, trucks, push cars, hand cars, and all rolling stock and equipment and all the tools, implements, machinery, wood, coal, oil, and other supplies now owned, held or possessed by the Terre Haute Company, or which may be hereafter owned, acquired, held of possessed by it for use in connection with the working, maintenance and operation of the same or either of them or otherwise; and all rights, powers, privileges, and franchises now owned or possessed by or reserved to the Terre Haute Company in connection with the said property, railroads, leased lines, telegraph lines or otherwise, or any part thereof; together with the tools, issues, earnings, income and profits of all of the said property hereby demised and each and every part thereof.

To Have and to Hold all and singular the above described premises and property unto the party of the second part its successors and assigns forever.

And the party of the first part covenants with the party of the second part that the party of the first part has not made, done, committed or suffered any act or acts, thing or things whatsoever, whereby or by means whereof the above mentioned and described

premises, or any part or parcel thereof, now or at any time hereafter, shall be impeached, charged or incumbered, in any manner or any way whatsoever, except incumbrances herein enumerated, to-wit:

1. A mortgage heretofore made by the Belleville and Eldorado Railroad Company, dated July 1, 1880, to Thomas Denny and William Bayard Cutting, trustees, to secure the payment of its certain corporate bonds, to the amount of $220,000 par value of principal.

2. A mortgage heretofore made by the Belleville and Eldorado Railroad Company dated August 1, 1880, to William Bayard Cutting and Thomas Denny, trustees, to secure the payment of its certain corporate second mortgage income bonds to the amount of $330,000 par value of principal.

3. A mortgage heretofore made by the Belleville and Carondelet Railroad Company dated June 1, 1883, to Robert Fulton Cutting and M. Bayard Brown, trustees, to secure the payment of certain corporate bonds to the amount of $500,000 par value of the principal.

4. A mortgage heretofore made by the St. Louis Southern Railroad Company, dated September 1st, 1886, to the Mercantile Trust Company, Trustee to secure the payments of its certain corporate bonds for the amount of $550,000. par value of principal.

69 5. A subsequent mortgage made on the same date by the St. Louis Southern Railroad Company to the Mercantile Trust Company, Trustee, to secure the payment of its certain corporate second mortgage income bonds to the amount of $525,000 par value of the principal.

6. A certain other subsequent mortgage heretofore made by The St. Louis Southern Railroad Company, dated September 1, 1894, to The Mercantile Trust Company, Trustee, to secure the payment of its certain corporate first consolidated bonds to the amount of $1,325,000.

7. A mortgage heretofore made by the Carbondale and Shawneetown Railroad Company, dated March 1st, 1887, to the Mercantile Trust Company, Trustees, to secure the payment of its certain bonds to the amount of $250,000.

8. A mortgage heretofore made by the Chicago, St. Louis and Paducah Railway Company, dated September 1, 1887, to Spencer Trask and Edward F. Leonard, Trustees, to secure the payment of its certain corporate second mortgage income bonds to the amount of $1,000,000.

9. A mortgage heretofore made by the Illinois Central Railroad Company as party of the first part, the United States Trust Company of New York, as party of the second part, and the Terre Haute Company and the Belleville and Southern Illinois Railroad Company as parties of the third part, date January 1, 1896, together with a supplemental mortgage by the Terre Haute Company as party of the first part and the Illinois Central Railroad Company, as party of the second part, and the United States Trust Company of New York as party of the third part, and John A. Stewart as party of the fourth part, dated September 15, 1897, to secure the payment of certain

corporate bonds of the Illinois Central Railroad Company, to the amount of $15,000,000 par value of the principal.

And the party of the first part further covenants with the party of the second part, its successors and assigns, that the party of the first part shall and will at any time or times hereafter, upon the reasonable request and at the proper costs and charges of the party of the second part, its successors and assigns, make, do and execute or cause or procure to be made, done and executed all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectual vesting and confirming of their right, title and interest, now owned or hereafter acquired, in and to the property and premises hereby conveyed, or intended so to be in and to the party of the second part its successors and assigns, forever, as by the party of the second part, or its or their counsel learned in the law, shall be reasonably advised, devised or required.

It is a condition precedent of this conveyance that it shall take effect only in case the obligations of the party of the first part provided to mature upon the termination of the said lease, dated, September 15, 1897, shall be effectively matured by this instrument, or so much thereof as equals the said sum of Two Million Three Hundred and Forty-two Thousand Seven Hundred and Ninety Dollars ($2,342,790) and that the payment of the said sum shall be made by entering a credit for the said amount upon the said obligations so matured, and in case this condition shall not be fulfilled and performed, or in case this conveyance shall at any time become ineffectual, or be cancelled, rescinded or set aside, the said original lease dated October 1st, 1895, and the said supplemental lease dated September 15, 1897, and all the rights, obligations and liens created thereby shall be of full force and effect the same as if this instrument had never been made.

In Witness Whereof the parties hereto have hereunto set their hands and seals by their respective officers thereunto duly authorized the day and year first above written.

THE ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY,
JOHN C. WELLING, *Vice President.*

[CORPORATE SEAL.]

Attest:
W. B. BRUEN, *Secretary.*

ILLINOIS CENTRAL RAILROAD COMPANY,
By STUYVESANT FISH, *President.*

[CORPORATE SEAL.]

Attest:
A. G. HACKSTAFF, *Secretary.*

STATE OF ILLINOIS, *County of Cook, ss:*

Before me, Andrew P. Humburg, a Notary Public in and for the County and State aforesaid, this day personally appeared, John C. Welling, Vice President of the St. Louis, Alton and Terre Haute Railroad Company, and William G. Hackstaff, Secretary of said Company, who — both personally to me well known, and who are known to me to be the respective officers aforesaid, and acknowledged that they executed, and delivered the foregoing instrument in the name and on behalf of the last named Company as the free and voluntary act of the said Company for the uses and purposes
71 therein set forth.

Given under my hand and Notarial Seal this 17th day of February A. D. 1904.

ANDREW P. HUMBURG,
[NOTARIAL SEAL.] *Notary Public.*

STATE OF NEW YORK, *City and County of New York, ss:*

Before me, Thomas B. Clifford, a Notary Public in and for the County and State aforesaid, this day personally appeared Stuyvesant Fish, President of the Illinois Central Railroad Company, and Alexander G. Hackstaff, Secretary of said Company who are both personally to me well known and who are known to me to be the respective officers aforesaid, and acknowledged that they executed and delivered the foregoing instrument in the name and on behalf of the last named Company, and as the free and voluntary act of the said Company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this Fourteenth day of February, A. D. 1904.

THOS. B. CLIFFORD,
[NOTARIAL SEAL.] *Notary Public.*

Filed for record April 2nd, 1904, at 10:30 o'clock a. m.

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Herman B. Roewe, Recorder of Deeds in and for said County of St. Clair and State of Illinois, do certify the foregoing to be a true and correct copy of Lease from St. Louis, Alton and Terre Haute Railroad Company to Illinois Central R. R. Co. as the same appears of record in my office in Belleville Book 302, page 396, of said St. Clair County Records. And I further certify that I am custodian of said Records.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Office in Belleville, Illinois, this 27th day of January, A. D. 1905.

HERMAN B. ROEWE,
[SEAL.] *Recorder.*
By —— ——, *Deputy.*

Endorsed: Filed August 24, 1906. Daniel Hogan, Clerk, by A. S. Hamilton, Deputy.

72 And on the same day, to-wit: the 24th day of August, 1905, there issued out of said Clerk's office a subpœna in chancery, directed to the said Illinois Central Railroad Company, The Belleville and Southern Illinois Railroad Company, and The St. Louis, Alton and Terre Haute Railroad Company, and the United States Trust Company of New York, which was afterwards on the 22nd day of September, 1905, returned into said clerk's office by the Marshall of said district and which said subpœna, together with the return thereon, is in the words and figures following, to-wit:

73 UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

The United States of America to Illinois Central Railroad Company, The Belleville and Southern Illinois Railroad Company, The St. Louis, Alton and Terre Haute Railroad Company, and the United States Trust Company of New York, Greeting:

We command you and every of you, That you appear before our Judges of our Circuit Court of the United States of America, for the Eastern District of Illinois, at Danville, in said District, on the first Monday in the month of October next, to answer the bill of complaint of The Citizens' Savings and Trust Company this day filed in the Clerk's office of said court in said City of Danville, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Eastern District of Illinois to Execute.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Danville, aforesaid, this 24th day of August in the Year of our Lord one thousand nine hundred and Five, and of our Independence the 130th year.

[SEAL.] DANIEL HOGAN, *Clerk,*
By A. S. HAMILTON, *Deputy.*

Memorandum.

The above named defendants are notified that unless they and each of them shall enter their appearance in the Clerk's office of said Court, at Danville, aforesaid, on or before the day to which the above Writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

DANIEL HOGAN, *Clerk,*
By A. S. HAMILTON, *Deputy.*

74 [Endorsed:] Marshal's Civil Docket No. 17. Marshal's No. —. General No. 50. Circuit Court of the United States, Eastern District of Illinois. Citizens' Savings and Trust Co. *vs.* I. C. R. R. Co. *et al.* Chancery Subpœna. Returnable to rule day, first Monday in October A. D. 1905. Daniel Hogan, Clerk. Filed Sept. 22, at 3:50 p. m. Daniel Hogan, Clerk. By A. S. Hamilton, Deputy. —— ——, Complainant's Solicitor.

UNITED STATES OF AMERICA, *Eastern District of Illinois, ss:*

I have duly served the within chancery subpœna as follows: the Illinois Central Railroad Company by delivering a true copy of the same to L. C. Adams, ticket agent of said company at East St. Louis, Illinois, on August 25th, 1905, there being no President, Vice President, Sec'y or treasurer of said company found in my district. On the Belleville and Southern Illinois Railroad Company by delivering a true copy of the same to W. K. Murphy as director of said company, at Pinckneyville, Illinois, on September 12th, 1905, there being no President, Vice-President, Sec'y, or Treas., of said company found in my district; and on the St. Louis Alton and Terre Haute Railroad Company by delivering a true copy of the same to W. K. Murphy, as director of said company at Pinckneyville, Illinois, on September 12th., 1905, there being no President, Vice Pres., Sec'y or Treas. of said company found in my district.

The United States Trust Company of New York not found in my District.

C. P. HITCH,
United States Marshall,
By E. E. WATTS, *Deputy.*

Marshall's fees $31.80.

75 And afterwards, to-wit: on the 2nd day of October 1905 came the defendants The Belleville and Southern Illinois Railroad Company, the St. Louis, Alton and Terre Haute Railroad Company, and the Illinois Central Railroad Company, by their attorneys, and filed in said Clerk's office, each their separate plea to the jurisdiction, which pleas are in the words and figures following, to-wit:

76 In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

THE CITIZENS' SAVINGS AND TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY, ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY, and THE UNITED STATES TRUST COMPANY OF NEW YORK.

The Belleville and Southern Illinois Railroad Company, the above named defendant, especially appearing under protest for the purpose of this plea and for no other, says that the said defendant is not an inhabitant of the Eastern District of Illinois, nor does the said defendant reside therein, but that the said defendant is a corporation organized under the laws of the state of Illinois and is an inhabitant of the northern division of the Northern District of Illinois and resides at Chicago in the Northern Division of the Northern District of Illinois where the corporate meetings of the said defendant are held and its corporate business is transacted.

Wherefore, insisting upon the exemption of the said defendant

from suit in this court the said defendant says that not this court but the Circuit Court of the United States for the Northern District of Illinois, Northern Division, has jurisdiction in the premises.

THE BELLEVILLE AND SOUTHERN
ILLINOIS RAILROAD COMPANY,
By JOHN C. WELLING, *Vice President.*

Attest:
W. G. BRUEN,
Assistant Secretary.

NORTHERN DISTRICT OF ILLINOIS,
Northern Division, County of Cook, ss:

John C. Welling being duly sworn deposes and says that he is the Vice President of the above named defendant, The Belleville and Southern Illinois Railroad Company, and that the foregoing plea is true in fact and is not interposed for delay.

Subscribed and sworn to befor- me this 27th day of September 1905.

ANDREW P. HUMBURG,
[SEAL.] *Notary Public, Cook County, Illinois.*

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

77

J. M. DICKISON,
BLEWETT LEE,
JOHN G. DRENNEN,
Of Counsel for said Defendant.

Endorsed: Filed October 2nd, 1905. Daniel Hogan, Clerk.

78 In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

THE CITIZENS' SAVINGS AND TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY, ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY, and THE UNITED STATES TRUST COMPANY OF NEW YORK.

The St. Louis, Alton and Terre Haute Railroad Company, the above named defendant, especially appearing under protest for the purpose of this plea and for no other, says that the said defendant is not an inhabitant of the Eastern District of Illinois, nor does the said defendant reside therein, but that the said defendant is a corporation organized under the laws of the State of Illinois and is an inhabitant of the Northern Division of the Northern District of Illinois, and resides at Chicago in the Northern Division of the Northern District of Illinois where the corporate meetings of the said defendant are held and its corporate business is transacted.

Wherefore, insisting upon the exemption of the said defendant from suit in this court the said defendant says that not this court but the Circuit Court of the United States for the Northern District of Illinois, Northern Division, has jurisdiction in the premises.

ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY,
By JOHN C. WELLING, *Vice President.*

Attest:
W. G. BRUEN, *Secretary.*

NORTHERN DISTRICT OF ILLINOIS,
Northern Division, County of Cook, ss:

John C. Welling being duly sworn deposes and says that he is the Vice-President of the above named defendant, the St. Louis, Alton and Terre Haute Railroad Company, and that the foregoing plea is true in fact and is not interposed for delay.

Subscribed and sworn to before me this 27th day of September, 1905.

[SEAL.] ANDREW P. HUMBURG,
Notary Public, Cook County, Illinois.

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

J. M. DICKINSON,
BLEWETT LEE,
JOHN G. DRENNAN,
Of Counsel for said Defendant.

78½ [Endorsed:] In Equity. In the Circuit Court of the United States, for the Eastern District of Illinois. The Citizens' Savings & Trust Company *vs.* I. C. R. R. Co., *et al.* Plea to the jurisdiction of St. Louis, Alton & Terre Haute Railroad Company. J. M. Dickinson, Blewett Lee, John G. Drennan, of Counsel. Daniel Hogan, Clerk. Filed & entered Oct. 2, 1905.

79 In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

THE CITIZENS' SAVINGS AND TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD COMPANY; THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY; ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY; and THE UNITED STATES TRUST COMPANY OF NEW YORK.

The Illinois Central Railroad Company, the above named defendant, especially appearing under protest for the purpose of this plea and for no other, says that the said defendant is not an inhabitant of the Eastern District of Illinois, nor does the said defendant reside

therein, but that the said defendant is a corporation organized under the laws of the State of Illinois and is an inhabitant of the Northern Division of the Northern District of Illinois and resides at Chicago in the Northern Division of the Northern District of Illinois, where the corporate meetings of the said defendant are held and its corporate business is transacted.

Wherefore, insisting upon the exemption of the said defendant from suit in this court the said defendant says that not this court but the Circuit Court of the United States for the Northern District of Illinois, Northern Division, has jurisdiction in the premises.

ILLINOIS CENTRAL RAILROAD COMPANY,
By JOHN C. WELLING, *Vice President.*

Attest:
W. G. BRUNER, *Ass't Secretary.*

NORTHERN DISTRICT OF ILLINOIS,
Northern Division, County of Cook, ss:

John C. Welling being duly sworn deposes and says that he is the Vice-President of the above named defendant, the Illinois Central Railroad Company, and that the foregoing plea is true in fact and is not interposed for delay.

Subscribed and sworn to before me this 27th day of September 1905.

[NOTARIAL SEAL.] ANDREW P. HUMBURG,
Notary Public, Cook County, Ill.

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

J. M. DICKINSON,
BLEWETT LEE,
JOHN G. DRENNAN,
Of Counsel for said Defendant.

80 [Endorsed]: In Equity. Circuit Court of United States for Eastern District of Illinois. The Citizens' Savings & Trust Co., Complainant, *vs.* Illinois Central Ry. Co. *et al.* Filed & entered Oct. 2, 1905. Daniel Hogan, Clerk. J. M. Dickinson, Blewett Lee, John G. Drennan, of Counsel.

81 And afterwards to-wit: on the 13th day of November 1905, came the complainant in this suit and filed in the Clerk's office, its motion to set down for argument the pleas to the jurisdiction of Belleville and Southern Illinois Railroad Company, St. Louis, Alton and Terre Haute Railroad Company, and Illinois Central Railroad Company, which motion is in the words and figures following to-wit:—

82 In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

CITIZENS' SAVINGS & TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, BELLEVILLE & SOUTHERN ILLINOIS RAILROAD COMPANY, ST. LOUIS, ALTON & TERRE HAUTE RAILROAD COMPANY, and UNITED STATES TRUST COMPANY OF NEW YORK.

Now comes the complainant in the above entitled cause, and respectfully moves this Honorable Court to set down for argument the pleas heretofore filed in said cause by the defendant, the Illinois Central Railroad Company, and by the defendant The St. Louis, Alton & Terre Haute Railroad Company, and by the defendant, The Belleville & Southern Illinois Railroad Company.

STEWART, ELIOT & WILLIAMS,
Solicitors for Complainant.

83 [Endorsed:] Circuit Court of United States for the Eastern District of Illinois. Citizens' Savings & Trust Co. Complainant, *vs.* Illinois Central Ry. Co. *et al.* Defendants. Motion to set down pleas for argument. Filed Nov. 13, 1905. Daniel Hogan, Clerk.

84 And afterwards, to-wit, on the 18th day of December, 1905, there was filed in the said clerk's office an order; which order is in the words and figures following to-wit:

85 # 50.

CITIZENS' SAVINGS & TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD CO. ET AL.

In Equity.

And now again come the parties to this cause, and the Court having heretofore heard the arguments of the counsel, concerning the sufficiency of the several pleas of the defendant to the jurisdiction of the Court herein, and the Court having had due consideration thereof, and being fully and sufficiently advised in the premises,

It is ordered, adjudged and decreed by the Court that the said respective pleas of the defendants herein are sufficient in law and *and* do deprive this Court of jurisdiction of the persons of the said defendant- and each of them. And the Court having looked into the bill of complaint of the complainant to determine if a local action is therein stated, doth consider, order, adjudge and decree that the facts in said bill stated and contained are insufficient in law or equity as grounds for setting aside or cancelling the several instruments

therein described or either of them, and the said suit is not local to this district, and therefore,

It is further ordered, adjudged and decreed by the Court that the said suit of the complainant be, and the same is dismissed for want of jurisdiction of this Court, and that complainant pay the costs of this suit and that execution issue therefor.

86 [Endorsed:] # 50. Equity. Decree. Filed Dec. 20, 1905. Daniel Hogan, Clerk.

87 And afterwards, to-wit: on the 20th day of December 1905, there was filed in said clerk's office an order; which order is in the words and figures to-wit:—

88 In Equity. No. 50.

CITIZENS' SAVINGS & TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD CO. ET AL.

And now again come the parties to this cause and the Court having heard the evidence, and arguments of counsel, upon the issues joined herein upon the pleas of the defendants to jurisdiction of the Court, and after having taken the cause under advisement, and the Court now being fully and sufficiently advised in the premises doth find, that the defendants in fact were at the time of the commencement of this suit and are inhabitants of the Northern District of Illinois.

It is therefore ordered, adjudged and decreed by the Court that the said pleas to the jurisdiction of this Court be, and the same are sustained.

And it is further ordered, adjudged and decreed by the Court that said suit of the complainant be, and the same is dismissed for the want of the jurisdiction of this Court. That complainant pay the costs of this suit and that execution issue therefor.

89 [Endorsed:] # 50. Equity. Decree. Filed Feb. 6, 1906. Daniel Hogan, Clerk.

90 And afterwards, to-wit: on the 28th day of December, 1905, came the complainant herein and filed in the office of the said clerk its motion to set aside the order dismissing the bill of complaint, which motion is in the words and figures following, to-wit:—

91 In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

No. 50.

CITIZENS' SAVINGS & TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Now comes the complainant in the above entitled cause, and respectfully moves this Honorable Court to set aside the order entered by said Court on the 20th day of December, 1905, dismissing complainant's bill of complaint for want of jurisdiction of this Court; and as ground for its motion to set aside said order, the complainant respectfully states:

First. That this Honorable Court erred in holding that the aforesaid suit is not a local suit and properly brought within this District.

Second. Because in entering the aforesaid order dismissing said bill of complaint for want of jurisdiction, this Court did not consider Sections 10 and 14 of the Act of Congress of March 3, 1905 establishing the Judicial District to be known as the Eastern District of Illinois, 33 Statutes at large, 992, 995: under which Sections it is specifically provided that this Honorable Court has jurisdiction of all suits, otherwise cognizable by a Circuit Court of the United States, in which the defendant is found within the Eastern District of Illinois.

Third. Because, by demanding the right to argue the merits of the bill of complaint at the hearing upon December 11th, 1905 and by so arguing the merits of said bill of complaint over complainant's objection, and by moving the Court to dismiss said bill of complaint for want of equity, the defendants have entered their general appearance in this cause and have waived all questions as to the jurisdiction of this Court over the persons of said defendants.

Fourth. Because this complainant desires an opportunity of filing replications to the pleas to the jurisdiction as filed in this cause by the Belleville & Southern Illinois Railroad Company and the St. Louis, Alton & Terre Haute Railroad Company, and of
92 denying the allegations contained in said pleas. The complainant expects to prove, and will prove, by evidence which it will offer in support of such replications, that said Belleville & Southern Illinois Railroad Company and the said St. Louis, Alton & Terre Haute Railroad Company are not residents or inhabitants of the Northern District of Illinois, as alleged in said pleas to the jurisdiction, but that said Railroad Companies are residents and inhabitants of this Eastern District of Illinois.

Wherefore, your complainant respectfully prays that the order entered by this Honorable Court on the 20th day of December, 1905 dismissing this suit for want of jurisdiction, and ordering that execution be issued against the complainant for costs of this suit be set

aside and that said pleas to the jurisdiction filed by said defendants be overruled, or, if the Court should decline so to overrule said pleas, then that the complainant be allowed to file replications denying the allegations contained in the pleas to the jurisdiction of this Court filed by the said Belleville & Southern Illinois Railroad Company and by the St. Louis, Alton & Terre Haute Railroad Company.

STEWART, ELIOT & WILLIAMS,
Solicitors for Complainant.

93 [Endorsed:] Circuit Court of United States for Eastern District of Illinois. Citizens' Savings & Trust Co. Complainant *vs.* Illinois Central Ry. Co., *et al.* Defendants. Motion to set aside order dismissing suit for want of jurisdiction. Filed Dec. 28, 1905. Daniel Hogan, Clerk.

94 And on this same day, to-wit: the 28th day of December 1905, there was filed in said clerk's office an order; which order is in the words and figures to-wit:—

95 In Equity. No. 50.

THE CITIZENS SAVINGS AND TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

And now on this 28th. day of December comes the Complainant, by Stewart, Elliott and Williams, its solicitors, and moves the court to set aside the decree entered on the 18th day of December, 1905, dismissing the bill of complaint, of the complainant for want of jurisdiction, and the court after hearing the argument of counsel for complainant and counsel for defendants in this cause, and being sufficiently advised,

It is ordered that the motion be allowed, as to so much of said decree as dismisses the suit for want of jurisdiction and leave is hereby granted complainant to file replication to said pleas, and the court finds that at the argument of the pleas to the jurisdiction set down for argument and heard on the 11th day of December, 1905, the defendants by their counsel contended that the question of the sufficiency of the bill was in issue the same as if a demurrer to a plea had been filed. The complainant objected to any argument of the merits of the bill and contended that sufficiency of the bill was not in issue. The court suggested a doubt whether the sufficiency of the bill was in issue, but permitted the defendants' counsel to argue the question of the sufficiency of the bill in order that such argument might be considered in case the Court should conclude that the sufficiency of the bill was involved in the disposition of the pleas. Thereupon the defendants' counsel argued that the Court ought to dismiss the bill for want of equity, but no motion to that effect was made by defendants.

96 And on this same day, to-wit: the 28th day of Dec*m*eber, 1905, came the plaintiff and filed in the office of the said clerk, its separate replication to the pleas of jurisdiction of each of the defendants, the Belleville and Southern Illinois Railroad Company, the St. Louis, Alton and Terre Haute Railroad Company and the Illinois Central Railroad Company, which replications are in the words and figures following, to-wit:

97 In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

CITIZENS' SAVINGS & TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE & SOUTHERN ILLINOIS RAILROAD COMPANY, ST. LOUIS, ALTON & TERRE HAUTE RAILROAD COMPANY, and UNITED STATES TRUST COMPANY OF NEW YORK.

Now comes the complainant in the above entitled cause, and takes issue upon the plea filed by the defendant, the Belleville and Southern Illinois Railroad Company, in said cause, and denies that said defendant, The Belleville & Southern Illinois Railroad Co., is an inhabitant of the Northern Division of the Northern District of Illinois, and denies that the said defendant resides at Chicago in the Northern Division of the Northern District of Illinois, and states that the defendant, the Belleville & Southern Illinois Railroad Company, is an inhabitant of the Eastern District of Illinois, and that said defendant, the Belleville & Southern Illinois Railroad Company, resides within said Eastern District of Illinois.

Wherefore, complainant prays judgment in this Honorable Court upon said plea.

STEWART, ELIOT & WILLIAMS,
Solicitors for Complainant.

98 [Endorsed:] U. S. Circuit Court Eastern District of Illinois. Citizens' Savings & Trust Company, Complainant, *vs.* Illinois Central Railroad Co. *et al.*, Defendants. Replication to Plea to jurisdiction filed by Belleville & Southern Illinois Ry. Co. Filed Dec. 28, 1905. Daniel Hogan, Clerk.

99 In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

CITIZENS' SAVINGS & TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE & SOUTHERN ILLINOIS RAILROAD COMPANY, ST. LOUIS, ALTON & TERRE HAUTE RAILROAD COMPANY, and UNITED STATES TRUST COMPANY OF NEW YORK.

Now comes the complainant in the above entitled cause, and takes issue upon the plea filed by the defendant, the St. Louis, Alton &

Terre Haute Railroad Company, in said cause, and denies that said defendant, the St. Louis, Alton & Terre Haute Railroad Co., is an inhabitant of the Northern Division of the Northern District of Illinois, and denies that the said defendant resides at Chicago in the Northern Division of the Northern District of Illinois, and states that the defendant, the St. Louis, Alton & Terre Haute Railroad Company, is an inhabitant of the Eastern District of Illinois and that said defendant, the St. Louis, Alton & Terre Haute Railroad Company, resided within said Eastern District of Illinois.

Wherefore, complainant prays judgment in this Honorable Court upon said plea.

STEWART, ELIOT & WILLIAMS,
Solicitors for Complainant.

100 [Endorsed:] U. S. Circuit Court for Eastern District of Illinois. Citizens' Savings & Trust Company, Complainants, *vs.* Illinois Central Ry. Co. *et al.,* Defendants. Replication to plea to jurisdiction, filed by St. Louis, Alton & Terre Haute Ry. Co. Filed December 28, 1905. Daniel Hogan, Clerk.

101 In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

CITIZENS' SAVINGS & TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE & SOUTHERN ILLINOIS RAILROAD COMPANY, ST. LOUIS, ALTON & TERRE HAUTE RAILROAD COMPANY, and UNITED STATES TRUST COMPANY OF NEW YORK.

Now comes the complainant in the above entitled cause, and takes issue upon the plea filed by the defendant, the Illinois Central Railroad Company, in said cause, and denies that said defendant, the Illinois Central Railroad Company, is an inhabitant of the Northern Division of the Northern District of Illinois, and denies that the said defendant resides at Chicago, in the Northern Division of the Northern District of Illinois, and states that the defendant, The Illinois Central Railroad Company, resides within said Eastern District of Illinois.

Wherefore, complainant prays judgment in this Honorable Court upon said plea.

STEWART, ELIOT & WILLIAMS,
Solicitors for Complainant.

102 [Endorsed:] Circuit Court of United States for Eastern District of Illinois. Citizens' Savings & Trust Company, Complainant, *vs.* Illinois Central Ry. Co. *et al.,* Defendants. Replication to Plea to jurisdiction filed by Defendants, Illinois Central Ry. Co. Filed Dec. 28, 1905. Daniel Hogan, Clerk.

103 And afterwards to-wit: on the 7th day of March, 1906, there is filed in said clerk's office an order which order is in the words and figures following, to-wit:—

104 In the Circuit Court of the United States, for the Eastern District of Illinois. In Equity.

No. 50.

CITIZENS' SAVINGS AND TRUST COMPANY, Complainant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY, THE ST. LOUIS, ALTON & TERRE HAUTE RAILROAD COMPANY, and UNITED STATES TRUST COMPANY OF NEW YORK, Defendants.

It is hereby ordered that the Complainant shall have fifteen days time in which to file a certificate of evidence, and leave to file the same.

Filed March 7, 1906.
DANIEL HOGAN, *Clerk.*

105 And afterwards, to-wit: on the 10th day of March, 1906, there was filed in said Clerk's office a certificate of the evidence taken at the hearing on the pleas to the jurisdiction, which certificate of evidence is in the words and figures following, to-wit:—

106 In Equity. No. 50.

CITIZENS SAVINGS & TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Appearances.

Stewart, Eliot & Williams, for Complainant.
Blewet Lee, for Defendants.

W. G. Bruen, called on behalf of the Defendants, The Illinois Central Railroad Company, The Belleville & Southern Illinois Railroad Company, and The St. Louis, Alton & Terre Haute Railroad Company.

107 WILLIAM G. BRUEN, being first duly sworn was examined in chief by Mr. Lee, and testified as follows:

Q. What is your name, residence and occupation?
A. My name is William G. Bruen, Chicago, Assistant Secretary of the Illinois Central Railroad Company.
Q. Do you hold any position with the Belleville & Southern Illinois Railroad Company?

A. I am Assistant Secretary.
Q. Where is the principal office of that Company?
A. Chicago.
Q. What corporate business, if any, is transacted at that office?
A. Nothing, at present, possibly filing of State reports, although I don't think they do that, and the stock books and the corporation books.
Mr. BLAYNEY: I didn't understand.
A. The Secretary of State, you know send out two forms of reports, one trust and the other corporation reports, that is list of officers and directors, but I think they have discontinued sending that report in the last two or three years, in fact I don't think it has been sent to us.

Mr. LEE:

Q. Where were the last stockholders' meetings of the Company held?
A. In Chicago.
Q. Where were the last Directors' meetings of that Company held in the State of Illinois?
A. Chicago.
Q. Will you turn to the present by-laws of the Company?
(Witness referring to book.)
Q. Is there any provision in the first by-law in regard to the principal office of the Company?
A. "The annual meeting of the Stockholders, for the election of Directors and the transaction of general business, shall be held in the principal office of the Company in Chicago on the third Wednesday of October, in each year." Shall I read the balance of that?
108 Q. No, that is sufficient. When was that by-law adopted?
A. This annual meeting of the Stockholders, held in the City of Belleville, on Friday, October 23, 1896.
Mr. BLAYNEY: If you will read the entire by-law.
A. By-law No. 1. The Annual meeting of Stockholders for the election of Directors and transaction of general business shall be held at the principal office of the Company in Chicago, on the third Wednesday of October each year. Notice of such meeting shall be given by the Secretary by one publication thereof in some newspaper published in the City of Chicago at least ten days before the time of such meeting.

Mr. LEE:

Q. Where are the stock books of the Company kept?
A. I think I have them in Chicago.
Q. Where are the minute books kept?
A. In Chicago.
Q. Where are the account books kept?
A. In Chicago, I presume.
Q. Do you know of any other office of the Company?
A. No, I do not.

Cross-examination by Mr. BLAYNEY:

Q. Mr. Bruen, on what date did you become Assistant Secretary of the Belleville & Southern Illinois Railroad Company?

A. I will have to look that up, I don't know. I was appointed on October 29, 1897.

Q. Mr. Bruen, was the Belleville & Southern Illinois Railroad Company operating its own railroad at that time?

A. No, it was operated under a lease, it was leased in 1895, I think.

Q. To whom?

A. To the St. Louis, Alton & Terre Haute.

Q. Where are the railroad properties of the Belleville &
109 Southern Illinois Railroad Company located?

A. In St. Clair County, I suppose.

Q. As a matter of fact, Mr. Bruen, does not the railroad of the Belleville & Southern Illinois Railroad extend between Belleville, Illinois and the City of Duquoin, in Perry County?

A. Yes, that is a fact, I think, I had in mind another Company, the St. Louis, Belleville & Southern, that would make it Perry County.

Q. Belleville and Duquoin are both situated in southern portion of the State of Illinois?

A. Yes, sir.

Q. And Chicago is situated in the northern portion?

A. Yes, sir.

Q. Does the Belleville Company operate a railroad or has it any railroad property in Chicago?

A. Nothing there, I guess, except books and corporate papers.

Q. I asked if it operated any railroad, had any railroad properties?

A. No.

Q. Mr. Bruen, you think, at the time the Belleville Company was operating its property, leased to the Alton, in 1897, that their principal place—in 1897, when you became Secretary, that their principal place of business was in Chicago?

A. It was after October, 1897.

Q. What do you understand——

A. Or 6, rather, October, 1896.

Mr. LEE:

Let's get that date right.

(Question read.)

A. I will change that, October, 1896.

Mr. BLAYNEY:

Q. What do you understand by principal place of business?

A. Place where its annual meetings are held, its books and corporate papers are kept, meetings of Directors.

Q. Mr. Bruen, if the Directors and Stockholders' meetings of the Belleville Company are always held in Chicago, does that
110 constitute Chicago the principal place of business of the Belleville Company?

A. I should say so, the by-laws fix that.

Q. No, I just put the question, answer it in the form I put it.
A. Yes, I think so.
Q. Is it on that ground that you answer that the principal place of business is in Chicago?
A. I answered that because the by-laws fix the place there.
Q. Will you describe just what property, if any, was owned by the Belleville Company in Chicago in 1897?
A. I don't know of any property owned there.
Q. Did it transact any business of any kind there?
A. Yes, meetings of Stockholders and Directors held there.
Q. Outside of those meetings did it transact any corporate business?
A. Probably in our Vice-President's office books of account were maintained, entries made in them.
Q. As a matter of fact do you know that there was ever an account book of the Belleville Company kept in Chicago, of your own personal knowledge?
A. No, not of my own personal knowledge.
Q. Do you know of your own personal knowledge of any corporate business that was transacted in Chicago at any time, except the formal meetings of the Stockholders and Directors?
A. No, not of my personal knowledge.
Q. Has the Belleville Company ever collected any money in Chicago?
A. I don't know.
Q. Has it received any income or rent or anything else been paid to it in Chicago, to your personal knowledge?
A. I don't know.
Q. Where is the office of the Belleville Company in Chicago?
A. Exact location?
Q. Yes.
A. It is known probably as 1 Park Row.
111 Q. Is that the Central Station?
A. That is the Central Station.
Q. On what floor of that building is the office located?
A. Eighth floor.
Q. How would one find the office of the Belleville Company if one were to go there to look for it?
A. Well, I guess he would have to inquire around.
Q. Is there any sign of any kind to indicate the location?
A. Not of that particular company, no, there has been signs of our so called subsidiary lines but that Company isn't on.
Q. I am inquiring about the Belleville Company.
A. No.
Q. What room is it in on the eighth floor?
A. Office of the Secretary, Assistant Secretary, is room 806. The office where the books of accounts might have been kept was the Vice-president's office, on the same floor. I don't know what the number of the room is.
Q. You say books of account, but you say you don't know of your

own personal knowledge that there were books of account kept there?
A. Well, I refer to the ledger and journal.
Q. Do you know that the ledger and journal of the Belleville Company have been kept?
A. No, I don't.
Q. Where is the office of the Belleville Company on the eighth floor, what room, in this floor, of your own personal knowledge?
A. I should say Room 806.
Q. Who occupies that room, Mr. Bruen?
A. I do. It is known as the office of the Assistant Secretary.
Q. Is there any sign on that door, or anything to indicate that that is the office of the Belleville Company?
A. No, sir.
Q. Mr. Bruen, have the meetings of the Stockholders and Directors always been held in that room?
A. In one of the suite of rooms.
112 Q. I am asking as to Room 806?
A. Yes, in Room 806.
Q. You know that these Stockholders and Directors' meetings have always been held in that room?
A. Yes.
Q. Has the Belleville Company any furniture in that room?
A. No.
Q. Does it own any furniture in that room, or anywhere else in Chicago?
A. I don't believe it does.
Q. Is that room, Mr. Bruen, now as a matter of fact, not the office of the Illinois Central Railroad Company?
A. Yes, sir.
Q. It is so known in the Central Station, is it not?
A. Yes, sir.
Q. And it is not known as the office of the Belleville Company?
A. I don't imagine so to outsiders.
Q. Do you know anything, Mr. Bruen, about the assets of the Belleville Company?
A. Absolutely nothing.
Q. Is the Belleville Company in business now, Mr. Bruen?
A. I should say not, the property having passed by deed, no meetings have been held for a good many years, I don't think any books of account are maintained, or anything else.
Q. When do you understand that the Belleville Company went out of business?
A. Well, I should say with the delivery of the deed, in October, 1897.
Q. Do you understand that a company which is not in business can have a principal place of business?
A. I am not a lawyer, but I should think we could still continue to hold meetings of the last board of directors.
Q. You understand that would constitute its place of business?
A. I think so.

113 Q. Was the principal place of business of the Belleville Company always in Chicago, Illinois?

A. Not prior to October, 1896.

Q. You mean 1896 or 1897?

A. 1896.

Q. Where was it prior to that time?

A. At Belleville, Illinois.

Q. When was it changed from Belleville to Chicago, Mr. Bruen?

A. October, 1896.

Q. Was there a meeting of the stockholders held, Mr. Bruen, for the purpose of changing the place of business from Belleville to Chicago?

A. Yes, there was, by-laws were adopted at the meeting of the stockholders.

Q. I will ask you, Mr. Bruen, if that by-law doesn't merely say that the meetings of the Directors and Stockholders shall be held only at its principal place of business in Chicago, but does that by-law, as a matter of fact, locate its principal place of business in Chicago?

A. It says it shall be there.

Q. Read it now and see if it does?

A. The annual meeting of the Stockholders for the election of Directors and transaction of general business shall be held at its principal place of business in Chicago.

Q. Doesn't that merely assume that its principal place of business is in Chicago, in other words, that the by-law itself does not locate its principal place of business in Chicago?

A. It stated it shall be there.

Q. Doesn't it merely state that the meetings of the Stockholders and Directors shall be held at its principal place of business in Chicago?

A. Yes, it says that in so many words.

Q. Do you know, Mr. Bruen, whether or not there was any notice given to the Stockholders of that meeting at which that by-law

114 was adopted, which you refer to there?

A. I do not, of my own personal knowledge.

Q. That is all I want. Do you know how many votes were voted in favor of that change?

A. 10100 shares, 10100 shares, yes, 10100 shares voted in favor of the resolution.

Q. Do you know whether that is as much as two-thirds of the Stockholders?

A. Well, it was more than two-thirds of the Stockholders.

Q. Was there a certificate showing that change filed with the Recorder of Deeds of St. Clair County, and with the Secretary of State at Springfield?

Mr. LEE: We object, on the ground that the Belleville & Southern Illinois Railroad Company is incorporated under a special charter and not under the general laws of the State. The general laws of the State make provision for the change of the principal office of a company by filing papers with the Secretary of State, but there

is no such provision in the Charter of the Belleville & Southern Illinois Railroad Company. In the general law of the State in incorporation papers we are required to state where the principal office of the company is. The Charter of the Belleville & Southern Illinois Railroad Company makes no provision as to the location of the principal office. Therefore, I submit that the question is immaterial, whether or not papers were filed with the Secretary of State under the general corporation laws of the State.

Mr. BLAYNEY: If your Honor please, we contend that the Belleville & Southern Illinois Railroad Company is subject to the general provisions of the Statute of Illinois with reference to change of office.

The COURT: I will hear that, subject to the objection.

115 Mr. LEE: I desire also to make this point, that the validity of the adoption of the by-laws cannot be collaterally attacked in this way. The questions before the court are simply as to the actual location of the principal office, for the corporate business and the like. If a Stockholder or any person desires to attack the by-laws of the Company I submit it cannot be done in this collateral manner, it would have to be a direct attack on the by-law itself, in a proper proceeding for that purpose.

The COURT: Well, that question possibly raises the further question as to whether this is cross-examination or not. I don't think it is cross-examination of this witness.

Mr. BLAYNEY: If your honor please he has testified that the Belleville & Southern Illinois Railroad Company changed its office from Belleville to Chicago.

The COURT: He just simply introduced the by-law, that is all.

Mr. BLAYNEY: I am trying to find out what the by-law and record shows.

The COURT: I don't think it is cross-examination for you to attack the validity of the by-law. That you can do in chief, if you are entitled to it then. The last objection, I think, in effect raises the question whether or not this is cross-examination. I don't think it is.

Mr. BLAYNEY: In other words I would merely make him my own witness on that point.

The COURT: I suppose there is no objection to that, I have none, I hear none. The record can show that I hear it subject to objection.

116 Mr. BLAYNEY: Of course we object to the ruling that it is not cross-examination.

The COURT: Well, you can ask it that way in chief. However it is not important as to how it comes to the court. Go ahead.

Mr. BLAYNEY:

Q. Mr. Bruen, do the records in your possession show whether or not a certificate was filed with the Recorder of Deeds of St. Clair County, or with the Secretary of State at Springfield?

A. No, I find nothing here.

Q. Mr. Bruen, how many Stockholders' meetings have been held in Chicago subsequent to October, 1897?

A. Subsequent to October, 1897?

Q. Yes, or subsequent to the time when you stated that the office was changed from Belleville to Chicago.

A. Two.

Q. On what dates?

A. On September 9th, and then they met on October 20th and adjourned and the other meeting was held October 29, 1897. Two meetings held.

Q. Was there any business transacted at the meeting on September 9th?

A. Yes.

Q. What was the character of that business?

A. A memorandum of agreement of sale of the road was submitted and approved, and the deed of conveyance was submitted and approved.

Q. What business was transacted on October 20th?

A. The acts of the Directors of the previous year was submitted and approved, and the nine Directors were elected. Routine business, entirely.

Q. That was October 20th?

A. October 29th.

Q. What business was transacted on October 20th?

117 A. Stockholders meet, on motion adjourned to meet at the same place on Friday, October 29, 1897.

Q. How many Directors' meetings were held since the change?

A. Two.

Q. When were they held?

A. On November 17, 1897, and December 30, 1897.

Q. What business was transacted at those meetings?

A. On the meeting held November 17th there was simply election of officers for the ensuing year.

Q. On December 30th?

A. And the appointment of an executive committee. On December 30th the deed of conveyance dated September 10, 1897, was referred to, and resolution adopted that the action of the Vice-president and Secretary in executing the deed should be ratified and approved.

Q. Of your own personal knowledge are there any books of the Belleville Company, outside of the two minute books which you have there, and the stock book?

A. Not of my own personal knowledge.

Q. When were those books transferred from Belleville to Chicago?

A. Minute books and stock books?

Q. Yes.

A. They were in New York, I believe, before I had them.

Q. When did you receive them?

A. I can't state now, I don't know.

Q. In what shape did they come into your possession? Were they stored in boxes?

A. Yes, my recollection is that they were among other books.

Q. Where were they, and how long were they kept in those boxes?

A. They were taken out in a very few days and put in the vault.

Q. Mr. Bruen, at the present the officers of the Belleville & Southern Illinois Railroad Company, are all of them officers of the Illinois Central Railroad, Company, are they not?

A. Yes.

118 Q. You spoke about, in your direct examination, a report to the Railroad Warehouse Commission. I will ask you if, as a matter of fact, you don't know that the Belleville Company has not made a report to the Railroad and Warehouse Commission since 1897?

A. I don't know, because those reports are made in the Vice-president office, of the Illinois Central office.

Q. You don't know anything about that?

A. I don't know, if a blank comes to me, I simply refer it to them.

Mr. LEE:

Q. Mr. Bruen, is there a director or member of the last Board of Directors of the Belleville Southern Illinois Railroad Company who is not an officer in the Illinois Central Railroad Company?

A. Board of Directors?

Q. Yes.

A. Oh, yes.

Q. When these by-laws were adopted were they not adopted by a unanimous vote?

A. All the stock represented?

Q. Yes.

A. Yes.

Mr. BLAYNEY:

Q. The executive and administrative officers are also all officers of the Illinois Central Railroad Company?

A. Yes.

119 Mr. LEE:

Q. What position do you hold with the St. Louis, Alton & Terre Haute Railroad Company?

A. Secretary.

Q. Where is the principal office of that Company?

A. In Chicago.

Q. What corporate business, if any, is transacted there?

A. None at the present time.

Q. What was the last corporate business, and of what nature, transacted there?

A. I should say that the meeting, the last meeting of the Stockholders and Directors was held there.

Q. Will you turn to the present by-laws of that Company?

(Referring to large book.) Is there any by-law in relation to the location of the principal office of the Company?

A. Yes, By-law No. 1.

Q. Read it.

A. The annual meeting of Stockholders for the election of Directors and the transaction of general business, shall be held at the office of the Company in Chicago, on the Tuesday following the first Wednesday of October, in each year. Notice of such meeting shall be given by the Secretary by one publication thereof in some newspaper published in the City of Chicago at least ten days before the time of such meeting.

Q. When were those by-laws adopted?

A. At the annual meeting of the Board of Directors in the City of St. Louis, October 21, 1896,

Q. Since that time where have the Stockholders' meeting of the Company been held?

A. In Chicago.

Q. Where have the Directors' meetings of the Company in the State of Illinois been held?

A. In Chicago.

120 Q. Where have the stock books of the Company been kept?

A. In Chicago.

Q. Is there any other office, or has there been any other office of the Company, to your knowledge, except the one in Chicago, since that date?

A. No sir.

Q. Is this office in the same room as the office of the Belleville & Southern Illinois Railroad Company, about which you have testified?

A. It is.

Q. Have the Stockholders and Directors' meetings to which you refer, been held in that room?

A. In that room.

Cross-examination by Mr. BLAYNEY:

Q. At the time of the adoption of that by-law, in October, 1896, Mr. Bruen, did the St. Louis, Alton & Terre Haute Company have any railroad property, or did it operate any railroad properties in Chicago?

A. No.

Q. Where were the railroad properties of the St. Louis, Alton & Terre Haute?

A. In Southern Illinois, I can't tell what Counties, in Southern Illinois.

Q. Does the St. Louis, Alton & Terre Haute own any assets in Chicago?

A. Not of my own personal knowledge.

Q. Do they receive any moneys there?

A. I don't think they do.

Q. Have they received any moneys there, of your personal knowledge, since October, 1896?

A. Not of my personal knowledge.

Q. Mr. Bruen, how many principal offices, different cor-
121 porations, are in this room in which you say the office of the St. Louis, Alton & Terre Haute is?

A. That is a pretty hard question to answer.

Q. Well, to the best of your information?

A. About, probably a dozen, and more, maybe.

Q. Does the St. Louis, Alton & Terre Haute own any of the furniture in that room?

A. No sir.

Q. Illinois Central owns it all?

A. Yes sir.

Q. At the time this by-law was adopted the Illinois Central Railroad Company owned practically all the stock of the St. Louis, Alton & Terre Haute, did it not?

A. That I don't know about.

Q. To the best of your information isn't that a fact?

A. I have no knowledge, whatever, as to how much stock it held.

Q. All these railroads whose offices you have testified are in this room are subsidiary companies?

A. Subsidiary.

Q. Of the Illinois Central Railroad Company?

A. Of the Illinois Central Railroad Company.

122 Mr. LEE:

Q. What position, if any, do you hold in the Illinois Central Railroad Company?

A. Assistant Secretary, one of the Assistant Secretaries. There are two, one in New York and one in Chicago.

Q. Where is the principal office of that Company?

A. In Chicago.

Q. Where are the Stockholders' meetings of that Company held?

A. In Chicago.

Q. Where are the Directors' meetings of that Company in the State of Illinois held?

A. In Chicago.

Q. Where are its stock books kept?

A. In New York—I would state there are two sets — original books of stock books, one is maintained in New York and the other in Chicago. We receive transfers of all transfers.

Q. There is a set of stock books in each office?

A. In each office.

Q. Isn't it a fact that all corporate business of the Company is transacted from that office, except some Directors' meetings in the City of New York?

A. Yes sir.

Q. Is there any by-law of the Company in relation to the location of its principal office?

A. By-law No. 1.

Q. Will you read it?

(Referring to paper).

Mr. BLAYNEY:

Q. What are you reading?

A. I am reading from a certified copy of the Illinois Central by-laws as amended October 15, 1902, and ratified and approved by the Stockholders on the same date.

Q. Certified by whom?

A. Certified by me as Assistant Secretary, under the seal
123 of the Corporation.

Mr. LEE:

Q. Just read that first by-law, or so much as relates to the office of the Company.

A. The annual meeting of the Stockholders for the election of Directors and the transaction of other business shall be held on the third Wednesday of October in each year, at the office of the Company in the City of Chicago.

Cross-examination waived.

124 United States Circuit Court, Eastern District of Illinois.

I, Eva Freese, do hereby certify that on the 31st day of January, A. D. 1906, I took the evidence in the foregoing case, Citizens Savings & Trust Company *vs.* Illinois Central Railroad Company, *et al.*, No. 50, in shorthand, and that the foregoing is a true and complete transcript of all the evidence introduced in said case.

EVA FREESE,
Stenographer.

Correct.
BLEWETT LEE,
Solicitor as of Record.

Chicago March 8, 1906.

125 [Endorsed:] Filed M'ch 10, 1906. Daniel Hogan Clerk.

126 And on Tuesday, February 6th, 1906, there was filed in said clerk's office an order, which order is in the words and figures following, to-wit:—

127 TUESDAY, *February* 6, 1906.

Present: Honorable Francis M. Wright, Judge.
The following proceedings were had and entered of record.

CITIZENS SAVINGS AND TRUST COMPANY
vs.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

In Equity.

And now again come the parties to this cause and the Court having heard the evidence, and arguments of counsel upon the issues joined

herein upon the plea of the defendants to the jurisdiction of the Court, and after having taken the cause under advisement, and the court now being sufficiently and fully advised in the premises doth find, that the defendants in fact were at the time of the commencement of this suit and are inhabitants of the Northern District of Illinois.

It is therefore ordered, adjudged and decreed by the Court that the said plea- to the jurisdiction of this court be and the same are sustained.

And it is further ordered, adjudged and decreed by the court that said suit of the complainants be and the same is dismissed for the want of the jurisdiction of this court. That Complainant pay the costs of this suit and that execution issue therefor.

128 And afterwards, to-wit: on the 2nd day of March, 1906, there was filed in the said clerk's office, by the complainant, a petition for appeal to the Supreme Court of the United States, which petition is in the words and figures following, to-wit:

129 UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

CITIZENS SAVINGS AND TRUST COMPANY, Complainant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY, ST. LOUIS, ALTON & TERRE HAUTE RAILROAD COMPANY, and THE UNITED STATES TRUST COMPANY OF NEW YORK, Defendants.

The above named complainant, conceiving itself ag-rieved by the order and decree made and entered on the 6th day of February, 1906, in the above entitled cause, dismissing the said suit because the court, in its opinion, did not have jurisdiction thereof, does hereby appeal from said order and decree to the supreme court of the United States; and having made and filed herewith, with the clerk of this court, its assignment of errors, specifying specifically and particularly each error asserted and intended to be urged in said Supreme Court of the United States in reference to said question of jurisdiction, does now pray that this its appeal from said decree dismissing this cause for want of jurisdiction, may be allowed, and said question of jurisdiction be certified to the said Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which the said order and decree was made, duly authenticated may be sent to the Supreme Court of the United States; and said appellant does hereby tender and offer a good and sufficient bond, with surety, conditioned, according to law.

Dated this second day of Marsh, 1906.

CITIZENS SAVINGS AND TRUST COMPANY,
By STEWART, ELIOT & WILLIAMS,
Its Solicitors.

The foregoing prayer for appeal is allowed as prayed.
This second day of March, 1906.

FRANCIS M. WRIGHT,
Judge of the United States District Court
of the Eastern District of Illinois.

Filed March 2, 1906.
DANIEL HOGAN, *Clerk.*

130 And on the same day, to-wit the 2nd day of March, 1906, there was filed in the said clerk's office an order, which order is in the words and figures following, to-wit:

131 UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States, the Eastern District of Illinois. In Equity.

CITIZENS SAVINGS AND TRUST COMPANY, Complainants,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY, ST. LOUIS, ALTON & TERRE HAUTE RAILROAD COMPANY, and THE UNITED STATES TRUST COMPANY OF NEW YORK, Defendants.

Order Granting Appeal.

Now comes the complainant, in the above entitled cause, by its Solicitor, and in open cour- files herein an assignment of errors and petition for appeal to the United States Supreme Court from the decree rendered herein dismissing this cause for want of jurisdiction, and presents its bond for such appeal in the penal sum of five hundred dollars ($500.00), conditioned as required by law.

Thereupon it is ordered by the court, that such appeal be allowed as prayed, and that said bond, therefor, be approved; and it is further ordered that a citation be issued, admonishing said defendants to be and appear at said United States Supreme Court within thirty days from this date.

It is further ordered that the clerk of this court make out and certify to said Supreme Court of the United States a full, true and complete transcript of the record and all proceedings in said cause.

This second day of March, 1906.

FRANCIS M. WRIGHT,
District Judge of the United States
for the Eastern District of Illinois.

Filed March 2, 1905.
DANIEL HOGAN, *Clerk.*

132 And on the same day, to-wit: the 2nd day of March, 1906, there was filed in the office of the said clerk, by the complain-

ant herein, a bond, which bond is in the words and figures following, to-wit:

133 UNITED STATES OF AMERICA, *Eastern District of Illinois:*

CITIZENS SAVINGS AND TRUST COMPANY, Appel-ant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL., Respondents.

In Equity.

Know all men by these presents, that we, the Citizens' Savings and Trust Company, and John McClusky Blayney, Jr., are held and firmly bound unto the Illinois Central Railroad Company and the St. Louis, Alton and Terre Haute Railroad Company, and the Belleville and Souther- Illinois Railroad Company, in the full and just sum of five hundred dollars ($500.00), to be paud to the said Illinois Central Railroad Company, The Belleville and Southern Illinois Railroad Company *Railroad Company,* The St. Louis Alton and Terre Haute Railroad Company, and their successors and assigns. To which payment, well and truly to be made, we bind ourselves, and our successors and assigns.

Sealed with our seal and dated this 26th day of February A. D. 1906.

Whereas the above named Citizens Savings and Trust Company has prossecuted an appeal *in* the Supreme Court of the United States of America, to reverse a decree rendered in the above entitled suit by the United States Circuit Court for the Eastern District of Illinois:

Now therefore, the condition of this obligation is such, that if the Citizens Savings and Trust Company shall prosecute its said appeal to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

THE CITIZENS' SAVINGS AND TRUST COMPANY,
By H. B. NORRES, *Vice-President.*

Attest:
J. R. NUTT, *Secretary.*

JOHN McCLUSKY BLAYNEY, JR.

Filed, March 2, 1906.
DANIEL HOGAN, *Clerk.*

134 And on the same day, to-wit: the 2nd day of March 1906, there was filed in the office of the said clerk an assignment of errors, which assignment is in the words and figures following, to-wit:

135 UNITED STATES OF AMERICA, *Eastern District of Illinois, ss:*

In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

CITIZENS SAVINGS AND TRUST COMPANY, Complainant,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY, ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY, and UNITED STATES TRUST COMPANY OF NEW YORK, Defendants.

Assignment of Errors.

And now on this the second day of March, 1906, comes the complainant, in the above entitled cause, and says that the order and decree in the said cause made and entered on the 6th day of February, 1906, dismissing said cause for want of jurisdiction, is erroneous and against the just rights of the complainant, for the following reasons:

(1) That from the evidence taken in open court and made part of this record, it appears that the defendant The Belleville and Southern Il-inois Railroad Company is an inhabitant of and resides within the Eastern District of Illinois, and is not an inhabitant of nor does it reside within the Northern District of Illinois.

(2) That from the evidence taken in open Court and made part of this record, it appears that the defendant The St. Louis, Alton and Terre Haute Railroad Company is an inhabitant of and resides within the Eastern District of Illinois, and is not an inhabitant of nor does it reside within the Northern District of Illinois.

(3) That it appears from the bill of complaint in this cause, that this is a suit brought to inforce "an equitable lien upon, or claim to, or to remove an incumbrance or lien or cloud upon the title to real estate" within the Eastern District of Illinois, and comes
136 within Section 8 of the Act of March 3, 1875 (18 Stat. L. 472) entitled "An act to determine the jurisdiction of Circuit Courts of the United States, and to regulate the removal of causes from State Courts, and for other purposes."

(4) That by demanding the right to argue, and by arguing the merits of the bill of complaint on the 11th day of December, 1905, in open Court, and by arguing at said place and time that the Court should dismiss said bill of complaint on its merits, the solicitor representing the defendants, Illinois Central Railroad Company, The Belleville and Southern Illinois Railroad Company and The St. Louis, Alton and Terre Haute Railroad Company, thereby entered a general appearance on behalf of said defendants, and thereby waived the right of said defendants to be sued only in the Northern District of Illinois, if any such right exists.

Wherefore, complainant prays that said order and decree of the Circuit Court of the United States for the Eastern District of Illinois, made and entered herein on the 6th day of February, 1906,

dismissing this cause for want of jurisdiction, may be reversed and the Circuit Court be directed to set aside said order and decree, and proceed with the hearing of said cause.

CITIZENS' SAVINGS AND TRUST COMPANY, *Complainant, Appellant,*
By STEWART, ELIS & WILLIAMS,
Its Solicitors.

Endorsed: In the United States Circuit Court, Eastern District of Illinois. Citizens Savings and Trust Company, Complainants *vs.* Illinois Central Ry. Co. *et al.*, Defendants. Assignments of errors. Filed March 2, 1906, Daniel Hogan, Clerk.

And afterwards, to-wit: March 2, 1906, there was filed in the office of the said Clerk, an order, which order is in the words and figures following, to-wit:

137 UNITED STATES OF AMERICA, *Eastern District of Illinois, ss:*

In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

CITIZENS SAVINGS AND TRUST COMPANY, Complainant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY, ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY, and UNITED STATES TRUST COMPANY OF NEW YORK, Defendants.

Certificate.

In the above entitled cause I hereby certify that the order of dismissal made and entered upon the 6th day of February, 1906, is based solely on the ground that this Court, in its opinion, has no jurisdiction in this suit. On the pleas to the jurisdiction presenting the question of jurisdiction, this suit is dismissed only for the reason above stated.

This appeal is granted solely upon the question of jurisdiction, and I hereby certify said question of jurisdiction to the Supreme Court of the United States. This certificate is made conformably to the act of Congress of March 3, 1891.

This 2d day of March, 1906.

FRANCIS M. WRIGHT,
United States District Judge, Holding the Circuit Court of the United States for the Eastern District of Illinois.

Endorsed: Filed March 2, 1906. Daniel Hogan, Clerk.

And afterwards, to-wit: on March 8, 1906, there was filed in the office of said Clerk a citation, which citation, with the acceptance thereto is in the words and figures following, to-wit:

138 The United States of America to the Illinois Central Railroad Company, The Belleville and Southern Illinois Railroad Company, and The St. Louis, Alton and Terre Haute Railroad Company, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty (30) days from and after this citation bears date, pursuant to an appeal prayed in the Circuit Court of the United States for the Eastern District of Illinois, wherein the Citizens' Savings and Trust Company is complainant in said appeal and you are defendants in said ap-eal, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties aforesaid in that behalf.

Witness the Honorable Francis M. Wright, District Judge of the United States for the Eastern District of Illinois, this 2nd day of March, 1906.

FRANCIS M. WRIGHT,
District Judge of the United States for the Eastern District of Illinois.

Service of the foregoing citation is hereby accepted, this 5th day of March, 1906.

J. M. DICKINSON,
Attorney for Illinois Central Railroad Company, for the Belleville and Southern Illinois Railroad Company, and for The St. Louis, Alton and Terre Haute Railroad Company.

Endorsed: Filed March 8, 1906. Daniel Hogan, Clerk.

And on March 7, 1906, there was filed in the office of the said Clerk a præcipe for transcript of record, which præcipe is in the words and figures following, to-wit:

139 In the Circuit Court of the United States for the Eastern District of Illinois. In Equity.

CITIZENS' SAVINGS AND TRUST COMPANY, Complainant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY, THE ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY, and UNITED STATES TRUST COMPANY OF NEW YORK, Defendants.

To Daniel Hogan, Esquire, Clerk of said Court:—

DEAR SIR: In preparing transcript of the record and proceedings, in the above entitled cause, on the appeal of the complainant to the Supreme Court of the United States, you are hereby requested to include and set forth in said transcript the following records, matters and things, viz:

1st. Venue, style and parties, etc.
2nd. Certificate of filing, etc., and transcript of all the following proceedings, orders, decree*d*, papers and documents, viz:
3rd. Bill of complaint of Citizens' Savings and Trust Company.
4th. Subpœna to the Belleville and Southern Illinois Railroad Company, and return by Marshal*l* thereto.
5th. Subpœna to the St. Louis, Alton and Terre Haute Railroad Company, and return by Marshal*l* thereto.
6th. Subpœna to the Illinois Central Railroad Company, and return of Marshal*l* thereto.
7th. Plea to jurisdiction of Belleville and Southern Illinois Railroad Company.
8th. Plea to jurisdiction of St. Louis Alton and Terre Haute Railroad Company.
9th. Plea to jurisdiction of Illinois Central Railroad Company.
140 10th. Motion of Citizens' Savings and Trust Company to set down for argument pleas to the jurisdiction of Belleville and Southern Illinois Railroad Company, St. Louis, Alton & Terre Haute Railroad Company, and Illinois Central Railroad Company.
11th. Order of court making finding of fact as to what occurred at the hearing of the argument of the pleas to the jurisdiction, set down for argument and heard on the 11th day of December, 1905.
12th. Order of Court, entered on the 20th day of December, 1905, dismissing bill of complaint for want of jurisdiction.
13th. Motion of Citizens' Savings and Trust Company to set aside order dismissing bill of complaint.
14th. Order of Court, setting aside order entered on the 20th day of December, 1905, dismissing bill of complaint, and permitting Citizens' Savings and Trust Company to file replication to the pleas to the jurisdiction of the Belleville & Southern Illinois Railroad Company, The St. Louis, Alton and Terre Haute Railroad Company, and the Illinois Central Railroad Company.
15th. Order granting leave to file certificate of evidence.
16th. Certificate of evidence taken at the hearing on the pleas to the jurisdiction.
17th. Order of February 6th, 1906, dismissing bill of complaint for want of jurisdiction.
18th. Petition for appeal.
19th. Order granting appeal.
20th. Bond.
21st. Assignment of errors.
22nd. Judges Certificate.
23rd. Citation and acceptance of service thereof.
24th. Præcipe for transcript.

Respectfully yours,

STEWART, ELIOT & WILLIAMS,
Solicitors for Appellant.

Endorsed: Filed March, 7, 1906. Daniel Hogan, Clerk.

141 UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

I, Daniel Hogan, Clerk of the Circuit Court of the United States for the Eastern District of Illinois, do hereby certify that the above and foregoing is a true and complete transcript of the proceedings had of record, and including a certificate of the evidence taken at the hearing on the pleas to the jurisdiction, in the case of the Citizens' Savings and Trust Company *vs.* the Illinois Central Railroad Company, the St. Louis, Alton and Terre Haute Railroad Company, the Belleville and Southern Illinois Railroad Company and the United States Trust Company of New York, as the same appears from the original records and files of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the *sael* of said court, at my office, in the City of Danville, in said district this 21st day of March A. D. 1906.

[Seal of the Circuit Court United States, Eastern District Illinois.]

DANIEL HOGAN, *Clerk.*

Endorsed on cover: File No. 20,150. E. Illinois C. C. U. S. Term No. 238. Citizens' Savings and Trust Company, appellant, *vs.* Illinois Central Railroad Company, Belleville & Southern Illinois Railroad Company, and St. Louis, Alton & Terre Haute Railroad Company. Filed March 26th, 1906. File No. 20,150.

FILE COPY.

FILED
DEC 29 1906
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1906.

CITIZENS' SAVINGS AND TRUST COMPANY,
Appellant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY, AND ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY,
Appellees.

No. 238.

Appeal from the Circuit Court of the United States for the Eastern District of Illinois.

BRIEF FOR APPELLANT.

EDWARD C. ELIOT,
WILLIAM B. SANDERS,
Counsel.

THOS. A. P. FLEMING PRINTING CO., ST. LOUIS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1906.

CITIZENS' SAVINGS AND TRUST COMPANY,
Appellant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY, AND ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY,
Appellees.

No. 238.

Appeal from the Circuit Court of the United States for the Eastern District of Illinois.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

STATEMENT OF FACTS.

This is a direct appeal under the terms of the Act of Congress of March 3, 1891, from a decision of the Circuit Court of the United States for the Eastern District of Illinois, dismissing complainant's bill for want of jurisdiction.

As the merits of complainant's bill are not now in issue, it will only be necessary to set out so much thereof as will apprise this Honorable Court of the general theory on which the bill was drafted and the relief it seeks. It is a minority stockholders' bill brought by the Citizens' Savings and Trust Company, a citizen of Ohio, against the Illinois Central Railroad Company, the Belleville & Southern Illinois Railroad Company, the St. Louis, Alton & Terre Haute Railroad Company, citizens of the State of Illinois, and the United States Trust Company of New York, a citizen of the State of New York. The last named corporation was joined as a mere formal party, being the trustee under certain deeds of trust, for the purpose of enabling said corporation to intervene and plead if it so desired.

Under the allegations of the bill the following principal facts appear:

The Belleville & Southern Illinois Railroad Company was organized under an Act of the General Assembly of the State of Illinois, dated February 14, 1857, and another Act dated March 4, 1869, both being public laws of said State. Under the powers granted to it in its charter the Belleville Company constructed and put in operation a line of railway from Belleville, in St. Clair County, in the State of Illinois, to Du Quoin, in the County of Perry, in said State, both of which points are within the Eastern District of the State of Illinois, as will be judicially noticed.

On October 1st, 1866, a gross earnings lease for a period of nine hundred and ninety-nine years was executed by and between the Belleville Company as party of the first part, and the Terre Haute Company as party of the second part, under which lease the railroad of the Belleville Company was operated by the Terre Haute Company until the year 1895. In the year 1895 a new lease was executed between the Belleville Company, the Terre Haute Company and the Illinois Central Railroad Company, under which lease the

properties of the said Belleville Company, previously held by said Terre Haute Company as lessee, were transferred to the Illinois Central Railroad Company for a period of ninety-nine years, with the privilege of renewal for a like period. On September 10, 1897, a deed was executed by the Belleville Company as party of the first part, and the Terre Haute Company as party of the second part, which purported to transfer the title to all the railroad properties of the said Belleville Company to the said Terre Haute Company in fee simple. On September 15, 1897, there was executed a lease by the Terre Haute Company, as lessor, and the Illinois Central Railroad Company as lessee, being a form of supplemental lease purporting to confirm the lease of April 4, 1896. On the 17th day of February, 1904, there was executed a deed by the Terre Haute Company and the Illinois Central Railroad Company, which purported to convey all the railroad properties, corporate rights, etc., of the Terre Haute Company in fee simple to the Illinois Central Railroad Company. The aforesaid leases and deeds are described in detail in the bill of complaint and in the exhibits attached thereto. The bill sets out in detail the effect of the various leases and deeds upon the properties of the Belleville Company and upon the four hundred shares of common stock which were held by complainant. It alleges that the Illinois Central Railroad Company secured sufficient stock in the Belleville Company and the Terre Haute Company to control said companies, and said control was secured and the aforesaid deeds and leases entered into in pursuance of a fraudulent scheme and plan of the Illinois Central Railroad Company to secure an entrance to the city of East St. Louis. The damage to the interest of the Belleville Company and to the interest of the minority stockholders and the grounds relied upon by the complainant to establish fraud on the part of the Illinois Central Railroad Company are set out in detail in complainant's bill, but are

not necessary to a decision of the question of jurisdiction involved in this appeal.

The complainant prays for a decree cancelling the lease dated April 4, 1896, the deed dated September 10, 1897, the supplemental lease dated September 15, 1897, and the deed dated February 17, 1904, so far as such leases and deeds affect the properties of the Belleville Company. And complainant further prays for the appointment of a receiver for the Belleville & Southern Illinois Railroad Company, and an accounting to such receiver or to the Belleville & Southern Illinois Railroad Company, by the Illinois Central Railroad Company, for such proportion of the yearly gross earnings of the Belleville Company as it was entitled to under the lease executed between the Belleville Company and the Terre Haute Company, dated October 1st, 1866, such accounting to date from the time the Illinois Central Railroad Company first acquired the railroad properties of the Belleville Company as lessee under the form of lease dated April 4, 1896. The bill also contains a prayer for general relief.

Service was had upon the Illinois Central Railroad Company, the Belleville Company and the Terre Haute Company, respectively, within the Eastern District of the State of Illinois. To complainant's bill the three railroad companies filed special pleas to the jurisdiction of the United States Circuit Court for the Eastern District of Illinois, alleging that they were, respectively, residents and inhabitants of the Northern District of Illinois, and were not residents or inhabitants of the Eastern District. These special pleas to the jurisdiction on complainant's motion were set down for argument.

At the argument of the pleas in open court, counsel representing the railroad companies took the position that the complainant's motion setting down the pleas for argument was equivalent to a demurrer, and placed in issue the question of the sufficiency of complainant's bill of complaint, and

demanded the right to argue in open court the merits of complainant's bill. Over the objection of complainant's counsel, counsel for the defendant railroad companies was permitted to argue to the court the general equity in complainant's bill, and did so argue, claiming that on the face of the bill complainant was not entitled to relief in equity, and that the bill should be dismissed for want of equity.

On December 20, 1905, a decree was rendered dismissing the complainant's bill for want of jurisdiction. On complainant's motion the decree of December 20, 1905, was set aside and complainant granted leave to file replications to the defendant's pleas to the jurisdiction, which replications to defendants' pleas were filed, denying the facts stated in the special pleas to the jurisdiction of the three railroad companies.

The evidence taken upon the plea of the Belleville Company on the issue thus raised was in substance as follows:

The offices and principal place of business of the Belleville Company from the date of its organization (1857) until October 23, 1896, is conceded to have been at Belleville, Illinois, within the present Eastern District of Illinois. On October 23rd, 1896, at a meeting of the stockholders of the Belleville Company, the following by-law was passed:

> "The annual meeting of stockholders for the election of directors and transaction of general business shall be held at the principal office of the Company in Chicago, on the third Wednesday of October each year. Notice of such meeting shall be given by the Secretary by one publication thereof in some newspaper published in the City of Chicago at least ten days before the time of such meeting."

During the year 1897 two formal meetings of the stockholders and two meetings of the directors were held in Chicago. Further than this, the Belleville Company has never transacted any business in any way, shape or form in Chi-

cago. The minute books of the stockholders' and directors' meetings, and the stock books, were sent to Chicago, and were kept in the offices of the Illinois Central Railroad Company. Except these books the Belleville Company has never owned any property or assets of any description in Chicago, not even a chair or desk. On October 23rd, 1896, the Belleville Company was the owner of a line of railroad within the Eastern District, which railroad at that time was leased to the Illinois Central Railroad Company.

On February 6, 1906, the Circuit Court entered a decree dismissing complainant's bill for want of jurisdiction. From this decree the present appeal is taken.

ASSIGNMENT OF ERRORS.

1. The Circuit Court of the Eastern District of Illinois erred in entering the decree dismissing complainant's bill for want of jurisdiction.

While this in reality is the fundamental error on which appellant relies, yet in order to comply more fully with the spirit of the rule laid down by this Honorable Court the appellant here summarizes the various reasons upon which it relies to establish that the Circuit Court of the Eastern District of Illinois had jurisdiction of complainant's bill.

a. That it appears from the complainant's bill of complaint that this suit is brought to enforce "an equitable lien upon, or claim to, or to remove any incumbrance or lien or cloud upon the title to real estate" within the Eastern District of Illinois, and comes within Section 8 of the Act of March 3rd, 1875 (18 Stat. L. 472), entitled "An Act to determine the jurisdiction of the Circuit Courts of the United States, to regulate the removal of causes from State Courts, and for other purposes," as amended by the Act of March 3rd, 1887, and as corrected by the Act of August 13th, 1888.

b. That by demanding the right to argue, and by arguing the merits of the bill of complaint on the 11th day of December, 1905, in open Court, and by arguing at said place and time that the Court should dismiss said bill of complaint for want of equity, counsel representing the defendants, the Illinois Central Railroad Company, the Belleville & Southern Illinois Railroad Company and the St. Louis, Alton & Terre Haute Railroad Company, thereby entered a general appearance on behalf of said defendants, and thereby waived the personal right of said defendants to be sued only in the Northern District of Illinois, if any such right existed.

c. That from the evidence taken in open Court and made part of this record, it appears that the defendant, the Belleville and Southern Illinois Railroad Company is

an inhabitant of and resides within the Eastern District of Illinois, and that, therefore, under Sections 14 and 10 of the Act of March 3rd, 1905, creating the Eastern District of Illinois, the Circuit Court of the Eastern District of Illinois has jurisdiction of complainant's suit.

d. That by Sections 14 and 10 of the Act of March 3rd, 1905, creating the Eastern District of Illinois, the Circuit Court of said District was given jurisdiction of all causes in which the defendant is "found" within the District.

I.

THE CIRCUIT COURT OF THE EASTERN DISTRICT OF ILLINOIS HAS JURISDICTION OF THIS SUIT, BECAUSE IT IS A SUIT BROUGHT TO ENFORCE "AN EQUITABLE LIEN UPON OR CLAIM TO, OR TO REMOVE AN INCUMBRANCE OR LIEN OR CLOUD UPON THE TITLE TO REAL ESTATE" WITHIN THE EASTERN DISTRICT OF ILLINOIS, AND COMES WITHIN SECTION 8 OF THE ACT OF MARCH 3, 1875 (18 STAT. L. 472.)

Questions of the power of Courts over property within their jurisdiction without personal service of process upon the owners thereof, fall into two principal divisions: First, cases where the owner resides beyond the territorial jurisdiction of the sovereignty represented by the Court; and, secondly, where the owner resides beyond the jurisdictional limits of the particular Court, but within the bounds of the sovereignty represented by the Court.

The first class would be illustrated by a case, where the property is located in England, and the owner thereof resides in France. The power of the English tribunal would be limited by the general principles of fundamental law in reference to proceedings *in rem*. It would represent, in its purest sense a question of the Conflict of Laws. A similar question might arise between two States of our own Union. In such a case the power of the State Court having jurisdiction over the property would be further limited by the provisions of the Federal Constitution.

The second class of cases would be represented by a case where the property lies within the jurisdiction of one local court, and the owner resides within the jurisdiction of another local court, both within the same State. The State, having jurisdiction over both the person and the property, would enjoy perfect freedom in regulating the venue of suits. It might lawfully provide, and often does provide, that a personal suit could be brought against a defendant

in any county in which the defendant is served, without reference to the defendant's residence. Or it might provide that a defendant could be sued in any county in which he has real estate, and service made wherever defendant could be found within the State.

In the first class of cases mentioned above, the power of the Court over the property could only be determined by applying the common law doctrines in reference to local and transitory actions, and to proceedings *in rem*. In the second class of cases the first appeal must lie to the State Statutes which, if they cover the case, are controlling.

It is respectfully urged that the case presented by this appeal falls within the second class of cases mentioned above. The jurisdiction of the Federal Government being as broad as the bounds of the United States, it would be within the power of Congress to provide, if deemed proper, that a defendant could be sued in any Circuit Court in which the plaintiff elected to institute his suit, irrespective of defendant's residence, provided the suit were one over the subject matter of which the Constitution gave the Federal Courts jurisdiction.

It must be evident, therefore, that we are not primarily concerned, on this appeal, with the question as to whether or not the suit brought by the complainant is a local suit at common law, unless this question should prove of assistance in the interpretion of the Federal Statutes. Our first regard must be to the express provisions of the Congressional Statutes applicable to the case.

Section 1 of the Act of March 3, 1875 (as amended in 1887 and 1888) contains the following provision:

> "and no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of

different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

This provision contains, in the form of a personal privilege to a defendant, a sweeping limitation on the venue of suits in the Federal Circuit Courts. Congress has, however, from time to time, created various exceptions to the personal privilege granted by the last portion of Section 1, and the exception upon which the complainant in this case relies is contained in the following language, found in Section 8 of the Act of March 3, 1875 (as amended in 1887 and 1888):

> "That when, in any suit commenced in any Circuit Courts of the United States to enforce any legal or equitable lien upon, or claim to, or to remove any incumbrance, or lien, or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of, or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the Court to make an order directing such absent defendant or defendants to appear," etc.

Keeping in mind the absolute power of Congress to destroy entirely, if it should deem proper, the sweeping restriction on the venue of suits in the Federal Circuit Courts, contained in Section 1, we are, therefore, forced to an interpretation of the language used in Section 8.

Is the present suit brought "to enforce any legal or equitable lien upon, or claim to, or to remove any incumbrance, or lien, or cloud upon the title" to real property within the Eastern District of Illinois? If so, then the decree of the Circuit Court of the Eastern District of Illinois, dismissing this suit for want of jurisdiction, should be reversed.

The theory of complainant's bill is, that the Illinois Central Railroad Company has, by fraud, secured the execution by the Belleville & Southern Illinois Railroad Company of

certain leases and deeds, whereby the title to the properties of the Belleville Company has been transferred to the Illinois Central Railroad Company, and the complainant, as a stockholder in the Belleville Company, brings a minority stockholders' bill to have the said leases and deeds declared void. The bill is brought on behalf of the Belleville Company, and for the purpose of revesting in said Company the title to its railroad properties. The effect of a decree, as prayed by the complainant, will be to revest in the Belleville Company the title to its property. Is such a suit not an attempt "to enforce an equitable claim to," or to "remove an incumbrance or cloud upon," the title to real property? The only question primarily involved in the suit is the title to real estate. And it is directly, not indirectly, involved. The language used in Section 8 has been interpreted at various times. This Honorable Court has rendered two decisions on facts which are practically identical with those of the present case: Jellenik v. Huron Copper Mining Company, 177 U. S. 1, and Mellen v. Moline Malleable Iron Works, 131 U. S. 352.

In Jellenik v. Huron Copper Mining Co., a minoriay stockholders' bill was brought against the Huron Copper Mining Co. and certain of its directors and officers, alleging fraudulent mismanagement of the Company, a fraudulent assessment upon the stock of complainant and other stockholders, and a sale of said stock on account of failure to pay said assessment. The relief asked was the appointment of a receiver for the corporation, an accounting by the individual defendants to the corporation, and that the sale of complainant's stock and the stock of the other minority stockholders, so sold, should be declared fraudulent and void.

It was held that the suit fell within Section 738 of the Revised Statutes, being Section 8 of the Act of March 3, 1875. In the opinion, from which there was no dissent, is found the following:

"One of the objects of the present suit was to remove an encumbrance or cloud upon the title to certain shares of stock in a Michigan corporation. No question is made as to the jurisdiction of the Court so far as it rests with the diverse citizenship of the parties. The plaintiffs allege that they were the equitable owners of that stock, although the legal title was in certain of the defendants. The relief asked was a decree establishing their rightful title and ownership; and in order that such a decree might be obtained the defendants referred to were ordered to appear, plead, answer or demur; but as they refused to do so, the Circuit Court decided that it could not proceed further."

The opinion then proceeds to discuss whether the stock in question was personal property within the District, within the meaning of Section 738, and decided that it was, and that the decree of the Circuit Court dismissing the bill for want of jurisdiction was erroneous.

In Mellen v. Moline Malleable Iron Works, it became necessary for the Court to decide with reference to the jurisdiction of the Circuit Court of the United States for the Northern District of Illinois over a certain suit in equity which had been instituted by the National Furnace Co. against the Moline Malleable Iron Works. The character of the suit in question is described in the pleadings (page 357) as follows:

"That long prior to the time when said George H. Hill sold and conveyed to said complainant Mellen, in trust for the use and benefit of said Sophia H. Boyd, his interest in said trust deed and chattel mortgage as alleged in said bill of complaint, to-wit: on the 2d day of July, 1883, the said National Furnace Co. in its own behalf and on behalf of all the creditors of Moline Malleable Iron Works, exhibited its original bill of complaint in this Honorable Court, and made parties defendant thereto said Moline Malleable Iron Works * * *, thereby stating, among other things, that said National

Furnace Co. was a creditor of said Moline Malleable Iron Works, and that at the time when the said Moline Malleable Iron Works executed the said trust deed and chattel mortgage it was insolvent, and its indebtedness was largely in excess of its capital stock, and that its officers and directors had assented to the creation of this indebtedness, and that the said conveyances were fraudulent and void as against creditors of said Moline Malleable Iron Works; and therein and thereby prayed, among other things, that a receiver might be appointed to take charge of and manage the property of said corporation under the orders of this Court, and that the said trust deed and chattel mortgage might be held and adjudged fraudulent and void as against said National Furnace Co. and creditors of said Moline Malleable Iron Works."

It appears, on page 362, that counsel argued that the National Furnace Co. had neither a legal nor an equitable lien upon or claim to the property covered by the trust deeds, and that the Furnace company was only a general unsecured creditor of the Moline Malleable Iron Works, and that, therefore, the case did not fall within Section 738. In answer to this argument, this Court used the following language:

"Was the decree in the suit instituted by the National Furnace Co. (to be hereafter called the Furnace Company) against the Moline Malleable Iron Works (to be hereafter called the Iron Works) and others, declaring that Hill was not entitled to a lien or security by reason of the trust deed and chattel mortgage of June 23, 1883, void for want of jurisdiction in the Court that rendered it? This is the principal question in the present case. Its solution depends upon the construction of the eighth section of the Act of March 3, 1875, determining the jurisdiction of the Circuit Court of the United States. 18 Stat. 472, c. 137, section 8.

"That section authorizes an order to be made direct-

ing an absent defendant in any suit brought in a Circuit Court of the United States to enforce any legal or equitable lien upon, or claim to, or to remove any incumbrance, or lien, or cloud upon the title, to real or personal property *within the district where such suit is brought*— * * * The previous statute gave the above remedy only in suits 'to enforce any legal or equitable lien or claim against real or personal property within the district where the suit is brought,' while the act of 1875 gives it also in suits brought 'to remove any incumbrance or lien or cloud upon the title to' such property. Rev. Stat. Sec. 738; 18 Stat. 472, c. 137, Sec. 8.

"We are of the opinion that the suit instituted by the Furnace Company against the Iron Works and others belonged to the class of suits last described. The trust deed and chattel mortgage in question embraced specific property within the district in which the suit was brought. The Furnace Company, in behalf of itself and other creditors of the Iron Works, claimed an interest in such property as constituting a trust fund for the payment of the debts of the latter, and the right to have it subjected to the payment of their demands. In Graham v. Railroad Co., 102 U. S. 148, 161, this Court said that 'when a corporation becomes insolvent, it is so far civilly dead, that its property may be administered as a trust fund for the benefit of its stockholders and creditors. A court of equity, at the instance of the proper parties, will then make those funds trust funds, which, in other circumstances, are as much the absolute property of the corporation as any man's property is his.' See also Mumma v. Potomac Company, 8 Pet. 281, 286; County of Morgan v. Allen, 103 U. S. 498, 509; Wabash etc. Railway v. Ham, 114 U. S. 587, 594; 2 Story's Eq. Jur. Sec. 1252; 1 Perry on Trusts, p. 242. The trust deed and chattel mortgage executed by the Iron Works created a lien upon the property, in favor of Wheeler, Carson, Hill and the Keator Lumber Company, superior to all other creditors. The Furnace Company, in behalf of itself and other unsecured creditors, as well as Wheelock, denied

> the validity of Hill's lien as against them. That lien was, therefore, an incumbrance or cloud upon the title, to their prejudice. Until such lien or incumbrance was removed, they could not know the extent of their interest in the property or in the proceeds of its sale. The case made by the original, as well as cross-suit, seems to be within both the letter and the spirit of the Act of 1875."

If a suit brought by an unsecured creditor of A to set aside a deed made by A to B, as in fraud of creditors, is within Section 738, can there be any doubt that a suit brought by A to set aside a deed obtained from him by B through fraud, is also within said section? And what is the distinction between a suit brought by A to cancel a deed obtained through fraud by B, and a suit by A to cancel a sale made through fraud of B?

The cases of McBurney v. Carson, 99 U. S. 567, and Goodman vs. Niblack, 102 U. S. 556, are helpful and illustrate the fact that Section 738 has never been confined to actions which were strictly local at common law.

The facts in McBurney v. Carson were, briefly, as follows: A, seized of lands situated in South Carolina, died in 1856. By his last will and testament he appointed B his executor, with power to sell and hold the proceeds in trust for his widow and two minor children. B sold the lands in 1857 to C for $50,000, receiving therefor $15,000 in cash and the latter's bonds for the deferred payments, secured by a mortgage on the lands, which was duly recorded. In 1863 C sold the lands to D for $100,000 in Confederate Treasury notes. In that currency C paid his bonds to B, who surrendered them, entered the mortgage as satisfied, and invested the currency in Confederate bonds. The children, having come of age in 1866, assigned their interest in the estate to their mother, who resided in New York, and she, on the ground that the surrender of C's bonds and the can-

cellation of the mortgage were procured by fraud, brought her bill to set aside the cancellation of the mortgage as fraudulent and void. The bill was brought in the Circuit Court of the United States for the District of South Carolina, and C, who was a resident of New Jersey, was notified under the terms of the Act of June 1, 1872 (17 Stat. 198, p. 13). It was held by this Honorable Court, without dissent, Mr. Justice Swayne delivering the opinion, that the aforesaid statute was applicable to the case.

Mr. Justice Miller delivered the opinion in Goodman v. Niblack, and we recite the following extracts therefrom:

> "There came into the hands of Niblack as administrator de bonus non of the estate of Albert G. Sloo, the sum of $150,000, and the complainant is the owner of a judgment against Sloo for $31,344.44, recovered in the Supreme Court of the State of New York on the 20th day of January, 1855. The purpose of the present bill is to follow this money in Niblack's hand as a trust fund devoted by Sloo in his lifetime to the payment of that judgment. * * *
>
> "This is a proceeding in equity to enforce a lien on the fund which is within reach of the Court, and as trustees and complainant have the requisite citizenship, Section 738 of the Revised Statutes provides a remedy for inability to serve process by an order of publication. If they appear the suit will proceed as usual. If they do not appear the decree, so far as it affects the funds in the hands of Niblack, will bind them; and this is all that is necessary to give the Court jurisdiction to grant the relief prayed for by the complainants."

We desire, also, to cite the following decisions of the Circuit Courts:

Evans v. Charles Scribner's Sons, et al., 58 *Fed.* 303 (1893):

> "The purpose of the bill is two-fold: First, to require the defendants Scribners' Sons to bring into Court and to have cancelled as fraudulent a deed of

conveyance to certain real estate in the city of Atlanta and this District, which deed is alleged to have been obtained by duress and fraud. The value of the real estate, as the pleadings now stand, is alleged to be more than $2,000. * * * An order was granted under Section 8 of the Act of March 3, 1875, for service on Scribners' Sons. * * * Service was made under the order. * * * Yet so far as this bill seeks to set aside a deed to the real estate in question service seems to be entirely proper."

Cowell v. City Water Supply Co., et al., Circuit Court, Southern District of Iowa, 1899. 96 *Fed.* 769:

"But the subject matter of the suit, to-wit: cancellation of mortgages upon real estate within this District is of a local nature, and, therefore, is properly brought within this district wherein the property and real estate so mortgaged is situated. (Northern I. R. Co. v. Michigan Central R. Co., 15 Howard, 232, 243); as such the suit, if the amount in controversy is sufficient, could originally have been instituted in this Court, with the parties plaintiff and defendant as now named in the bill."

McGee, et al., v. Marietta & N. G. R. R. Co. et al., 48 *Fed.* 243 (1891):

Central Trust Co. of New York filed its bill against Marietta & North Georgia Railway Co. to foreclose a mortgage executed by said Railway Co. Subsequently McBee, as co-complainant, filed a bill against complainant and defendant in the first named bill and a large number of other firms and corporations, alleging that a portion of the railway covered by the mortgage was built by the Knoxville Southern Railroad Co.; that the complainants were lien creditors of the road; that the mortgage aforesaid in favor of bondholders is void, so far as the line built by the Knoxville Southern Railroad Co. is concerned, or if not void, is subject to the prior liens of the creditors of the Knoxville Southern Rail-

road. The bill asked for in injunction against the foreclosure of the mortgage by Central Trust Co. so far as the road built by the Knoxville Southern was concerned, for the appointment of a receiver for the sale of that railroad, and for the application of the proceeds to the debts of complainants and other creditors. It was held that the bill by McBee and co-complainants fell within the Act of March 3, 1875.

Castello v. Castello and others (*C. C. W. D. Mo.*) 14 *Fed. Rep.* 207: *Head Note*:

"2. Same—'Cloud on Title—Equitable Relief—Jurisdiction. When a complainant alleges in her bill that she was fraudulently induced to execute an agreement to receive less than her lawful share of her husband's estate, and that the estate is being divided according to such fraudulent agreement instead of being distributed in accordance with the laws of the State where it is being administered, the suit must be considered as instituted 'to remove a cloud upon title to personal property' within the meaning of Section 8 of the Act of March 3, 1875, and as calling for equitable relief within the jurisdiction of the United States Circuit Court."

p. 209:

"* * * Looking at the object of the bill, it mainly seeks to remove a lien or cloud upon her interest in the estate and property of her husband. That this estate passed into the hands of the public administrator, and may have been by him converted into money before this time, can make no difference. The question is, is she entitled to a different share or part of the estate and property of her husband than is provided for in the instrument of writing under which defendants claim, and which she alleges was obtained by deceit and fraud? The jurisdiction over questions of this kind by the Courts of the United States, when invoked by a distributee and citizen of another State, has

been determined by the Supreme Court in Payne v. Hook, 7 Wall, 425, and decisions since.

"The instrument sought to be set aside may, with no great impropriety, be called a lien upon the amount for final distribution of the estate of James O. Castello, for the defendants assert their title to the proceeds under it. At any rate, it is a cloud upon her title as long as it stands, and is made the basis of claims adverse to her interest."

Single v. Scott Paper Mfg. Co., et al., 55 Fed. 553 (1893):

This was a suit by complainant against defendant and others, non-residents, to enforce the specific performance of a contract to convey real estate. Held that the court has jurisdiction under Section 8, Act of March 3, 1875.

"Complainant in this case is a non-resident of the District, and a citizen of the State of New York. Defendants, who claim an interest and title to the real estate in controversy are all residents and citizens of the State of Michigan. The property in dispute lies wholly within the Western Division of this District. The question, therefore, presented is whether this Court, in a suit in which neither the plaintiff nor defendant reside in this District, but are citizens of other States can acquire jurisdiction and determine controversies between parties when the real estate in controversy lies wholly within the jurisdiction of the Court. * * *

"The next important question to determine is whether a bill for a specific performance constitutes a legal or equitable lien upon or claim to or to remove an incumbrance or lien or cloud upon a title to real or personal property. * * *

"If there were doubt as to whether, under the general equity rules and principles administered by this Court, aided by the provision of Section 738, the defendant can be brought within the jurisdiction of the Court without personal service, the authority of the Court to entertain such jurisdiction and administer the relief sought is made more certain and effective by reason of

the Ohio Statutes. Section 5024, of the Revised Statutes of Ohio, authorizes an action to compel a specific performance of the contract for sale of real estate. Section 5048 provides for constructive service in such cases. Section 5318 provides that when a party against whom a judgment or a conveyance * * * is rendered does not comply therewith by the time appointed, such judgment shall have the same operation and effect and be as available as if the conveyance * * had been executed conformable to such judgment. Considering these statutory provisions in the light of the principles announced in the case of Boswell's lessee v. Otis above quoted, our jurisdiction in this case seems clear."

As we will attempt to show in another portion of this brief, a suit for the specific performance of a contract for the sale of land may be either a suit *in personam* or a suit *in rem*, or *quasi in rem*.

It is very easy to establish that Section 738 is meant to include more than suits that were local at common law.

In the opinion in *Greeley v. Lowe*, 155 *U. S.* 58, 70, it is said:

"The law remained in this condition until 1872, when Congress, apparently to remove the difficulty suggested by these cases, passed an act, Act of June 1, 1872, c. p. 225, 17 Stat. 196, p. 13, subsequently incorporated into the Revised Statutes as section 728, providing that 'when any defendant in a suit in equity to enforce any legal or equitable lien or claim against real or personal property within the district where the suit is brought, is not an inhabitant of nor found within the said district, and does not voluntarily appear thereto, it shall be lawful for the Court to make an order directing such absent defendant to appear, plead, answer or demur to the complainant's bill, at a certain day therein to be designated," etc. And then follows the provision in section 739, that 'except in the cases provided by the preceding section (738) no civil suit shall be brought in any other district than that of which the defendant

> is an inhabitant,' etc. The 'next three sections' are section 740, in which special provision is made for States containing more than one district, requiring the defendant, if a single one, to be sued in the district where he resides, but if there are defendants in different districts, suit may be brought in either, and a duplicate writ issued against residents of the other districts; section 741, wherein provision is made for suits of a local nature where the defendant resides in a different district in the same State from that in which the suit is brought, permitting process to be served in the district where he resides; and section 742, providing that in any suit of a local nature at law or in equity, where the land or other subject matter of a fixed character lies partly in one district and partly in another, within the same State, suit may be brought in the Circuit or District Court of either district, etc. These sections—740, 741 and 742—are 'the next three sections' mentioned in Section 739 as exceptions to the general rule that no civil suit shall be brought against an inhabitant in any other district than his own."

It therefore appears, as the law stood after the Act of June 1, 1872, went into effect, that there were four exceptions to Section 739, one of which was Section 738 and another of which was Section 741, in reference to "local" suits. If Section 738, as it stood in the Act of 1872, did not embrace other suits than local suits, then it was a nullity. Furthermore, the language of Section 738 was broadened in the Act of 1875 by the addition of the words "or to remove any incumbrance, or lien, or cloud upon the title to."

The various States, in the exercise of their arbitrary right to control the venue of suits within their borders, have enacted Statutes, the language of which is sometimes more restricted, and sometimes broader in effect, than the language of Section 738. In deciding the effect of the words used in Section 738, some of the State decisions may be of benefit. *McLaughlin v. McCrory*, 55 *Ark.* 442 (1892)

Held that "a suit to cancel a fraudulent deed of land and revest title in the plaintiff is an action 'for the recovery of real property or an estate or interest therein,' within Section 4994 Mansf. Digest, which must be brought in the county where the land lies, and may be prosecuted against a non-resident defendant by publication."

In the opinion of the Court is found the following expression:

> "Now if it be true that a Court of equity may cause a deed to be cancelled by acting *in personam*, as in a transitory action, it is certain that when it attempts to accomplish that result by the force of its own decree it acts *in rem*."

And the following:

> "So far, then, from being confined to acting *in personam*, Courts of this State are empowered to annul a deed and establish title to lands within their jurisdiction by mere force of their decrees. To that extent their action is *in rem*."

Adams v. Cowles, 96 *Mo.* 501:

Section 3494 of the Revised Statutes of Missouri, 1879, provided for publication against non-residents, as follows:

> "In suits in partition, divorce, attachment, suits for the foreclosure of mortgages and deeds of trust and for the enforcement of mechanics' liens and all other liens against either real or personal property and in all actions at law or in equity which have for their immediate object the enforcement or establishment of any lawful right, claim or demand to or against any real or personal property within the jurisdiction of the Court."

The question before the court was whether or not a suit brought to set aside a deed as being a fraud of creditors was within the foregoing statute. It was argued by coun-

sel (page 503) that "it was not an action for the recovery of the land nor to enforce the right, claim or demand to or against it. It was a personal action for relief against an alleged fraud." The Court, however, held that the suit fell within the statute.

Judge Gantt, speaking for the Court, says (page 506:)

> "If the deed to William C. Glenn was fraudulent, then it was void as to Ferris, and that fact could be shown in ejectment. But Ferris had the further right to have the fraudulent deed cancelled and in effect erased from the public records, and to do this while the evidence was at hand. The relief asked is the establishment of a right to real property, and comes within the statute allowing the service of notice by publication."

Acker v. Leland, et al., 96 *N. Y.* 383 (1884:)

> "The action is brought to set aside a general assignment for the benefit of creditors made by the defendant Leland to his co-defendant, on the ground that it was made with intent to hinder, delay and defraud the plaintiffs and other creditors of the assignor. It appears from the affidavits in the schedules that the assignment comprised real and personal property, the principal part of which consisted of real estate situated in the counties of Albany and Saratoga. * * *
>
> "The action was, therefore, local, and triable either in the county of Albany or the county of Saratoga, under Section 982 of the Code. It was an action to procure a judgment annulling the title and affecting an estate of real property."

Section 982, referred to, is as follows:

> "Each of the following actions must be tried in the county in which the subject of the action or some part thereof is situated; * * * and every other action to recover or to procure a judgment establishing, determining, defining, forfeiting, annulling, or otherwise affecting an estate, right, title, lien, or other interest in real property or a chattle real."

We respectfully submit that the foregoing authorities establish that the present suit brought by complainant is a suit brought "to enforce an equitable claim to" or, "to remove an encumbrance or cloud upon" the title to real estate within the Eastern District of Illinois. We have hitherto urged that this is so, based upon the specific language used in Section 738, and irrespective of the question, as to whether or not the present suit is "local," as determined by the principles of common law. However this may be, no one will urge that Congress intended to exclude from Section 738 any suit which would have been "local" at common law, and, to strengthen our position, we will cite authorities to show that at common law the suit brought by complainant would have been local and not transitory.

Chapin et al. v. Dodds, 104 *Mich.* 232 (1895:)

Held that a suit by an assignee of an insolvent debtor to set aside as fraudulent a conveyance of lands is local, and must be filed in the county where the land is situated.

> "The writ must be granted. The Statutes provides that every suit in chancery shall be commenced in the Circuit Court for the county in which the property in dispute is situated, if the subject matter is local. How. Stat. Sec. 6612. It has frequently been held under this Statute that bills in equity affecting interests in real estate must be filed in the county where the lands or some portion of them are situated. Godfrey v. White, 43 Mich. 171; Krolik v. Bulkley, 58 Id. 411; Rankin v. Rothschild, 78 Id. 10."

McKenzie et al. v. Bacon, et al., 38 *La. Ann.* 764 (1886:)

> "Poche, J. Plaintiffs brought their action for the dissolution of a sale of an immovable for non-payment of the price, and filed it in the Parish of Caddo, where the property is situated. They sought to bring the non-resident heirs of the original vendee into court by means of the appointment of a curator ad hoc. The

other and successive vendees and their legal representatives are all residents of the State.

"The curator excepted to the jurisdiction of the Court on the ground, substantially, that the non-resident defendants, who own no property in this State, and against whom no attachment has been sued out, could not be cited in the mode proposed by plaintiffs, which mode does not constitute 'due process of law' within the meaning of the fourteenth amendment to the constitution of the United States.

"This appeal is taken from a judgment maintaining that exception and dismissing the suit.

"The principal contention of the curator involves the proposition that an action for the dissolution of a sale for non-payment of the price, having for its object the recission of a contract, is purely a personal action, in which the respective defendants, vendees, are not sued jointly, and that, therefore, non-resident defendants cannot be legally brought into Court by process of citation on a curator ad hoc.

"The argument is not tenable, and finds no support in the authorities on which it is predicated.

"The demand of plaintiffs is two-fold in its character; it embraces the dissolution of the sale and the possession thereunder of the property. The pith of the controversy under the issues thus tendered presents the question of the title or ownership of immovable property.

"The demand for the dissolution of the sale is a necessary step required by law as a means of acquiring possession of the property by the vendor, and that feature of the proceeding cannot be invoked as solely characterizing the nature of the action. The law provides that under the effect of the resolutory condition the contract is not dissolved of right by the failure of either of the parties to comply with his engagements; the dissolution must be judicially enforced. C. C., Arts. 2045, 2046.

"The legal effect of the dissolution of a sale under the resolutiory condition is to place matters as though the sale had never existed; hence it follows that the

practical result of the judgment enforcing the condition is to restore the ownership and the possession of immovable property to the previous owner, the complaining vendor.

"These conditions lead to the inevitable conclusion that such a proceeding is not a purely personal action as contemplated in our Code of Practice, and as understood in jurisprudence, but that it partakes of the nature of a proceeding *in rem*."

A proceeding *in rem*, strictly construed, is one taken directly against the property, in which the property itself is actually impleaded, as in the case of a libel in admiralty. But to determine the locality of an action, a proceeding *in rem* is construed more broadly, and embraces many actions brought against individual defendants, proceedings which properly, perhaps, should be called *quasi in rem*. The principle was stated by this Honorable Court in *Pennoyer v. Neff*, 95 *U. S.*, 734, as follows:

"It is true that, in a strict sense, a proceeding *in rem* is one taken directly against property, and has for its object the disposition of the property, without reference to the title to individual claimants; but in a larger and more general sense the terms are applied to actions between parties, where the direct object is to reach and dispose of property owned by them or by some interest therein."

Markham v. Powers, 9 *S. W.* 255 (*Ky.*) (1888.)

"An action to set aside a conveyance of land and subject it to the payment of a judgment, may be brought in the county where the land is, although the judgment was recovered and the debtor lived in another county."

Quarl v. Abbett, 102 *Ind.* 233 (1885:)

This was a suit by a creditor to set aside a transfer of stock by his debtor to a third party, on the ground that the transfer of said stock was fraudulent. Held, that such

suit could be brought in the courts of Indiana and the defendant, a non-resident, brought in by publication.

Lane v. Innes, 43 *Minn.* 137, 141 (1890:)

> "3. By section 5046, Rev. St. U. S., all property conveyed by the bankrupt in fraud of his creditors shall, by virtue of the adjudication of bankruptcy and the appointment of his assignee, be at once vested in such assignee. A judgment creditor claiming a lien upon the real property of his debtor may bring an action to remove the obstruction caused by a fraudulent conveyance before selling the property, or he may acquire title by execution sale, and then bring his action. Jackson v. Holbrook, 36 Minn. 494, 499, (32 N. W. Rep. 252); Wadsworth v. Schisselbauer, 32 Minn. 84; (19 N. W. Rep. 390). The object is to remove the obstruction or uncover the property, so that it may be disposed of at the best price, and the proceeds appropriated to the satisfaction of demands of creditors. That is substantially the nature of the action brought by the assignee against this plaintiff. Heidritter v. Elizabeth Oil-Cloth Co., 112 U. S. 294, 300 (5 Sup. Ct. Rep. 135;) In re Gurney, 7 Biss. 414; Rinchey v. Stryker, 28 N. Y. 45, 31 N. Y. 140. The action was not then an action *in personam,* but must be classed with actions *in rem.* The judgment sought to be recovered therein affects the land only, and it was an action where service by publication upon the non-resident defendant was proper, and one which falls within the provisions of Gen. St. 1878, c. 66, section 64, subd. 5. Pennoyer v. Neff, 95 U. S. 714, 733. See Bennett v. Fenton, 41 Fed. Rep. 283."

It was argued by counsel for appellees at the hearing in the Circuit Court that the suit brought by complainant could have been brought in the Circuit Court for the Northern District of Illinois, and a personal decree against the defendants secured, compelling them to reconvey the property to the complainant, therefore the suit was not "local." This is a *non sequitur.* The personal jurisdiction of equity

to compel a defendant to convey property in a foreign jurisdiction, has never been held to be a restriction on the power of the foreign Court, which has jurisdiction over the property, to adjudicate in reference to the title thereto, nor has it any effect in determining the question of the locality of an action. Except as limited by certain State Statutes, there are few suits "local" at common law, which cannot, under the modern doctrines of equity, also be brought in the jurisdiction in which the defendant can be served. The following statements from Brown on Jurisdiction are helpful:

Brown on Jurisdiction, p. 167:

> "* * * The following actions were local at common law: All actions for the recovery of real property or any interest therein, or the enforcement of any lien thereon, or the enforcement of the specific performance of a contract concerning the same where the property is claimed."
>
> "The statutes of the different states usually provide that actions shall be brought in the county or district where the defendants, or some of them, if more than one, reside. But, in general, the statute provides that real actions, or actions relating to real property, shall be brought in the county where the property lies. If the statute does not so provide, the action would be local by common law rules, which are usually adopted in this county by general consent. In order, therefore, to commence an action, local by common law, it is necessary to see that the statute makes express provision for the trial of it as a transitory one. Where the action is local, the venue must be laid in the county in which the land is situated, unless it is otherwise provided by statute."

p. 171, *Note*:

> "A 'real action' is brought for the specific recovery of lands, tenements or hereditaments. It includes every form of action where the judgment is for the title and possession of the land demanded; as, ejectment."

p. 172:

> "* * * Actions for waste, for the foreclosure of mortgages, for the quieting of title, for specific performance of contracts, for the sale of real estate, for the establishing of vendors' liens, ejectment and rents of the class before mentioned, must be commenced as local actions."

p. 171:

> "Notwithstanding the rule of law applied to the *lex rei sitae* to immovable property, in some cases the court of chancery where parties are domiciled has compelled parties within their jurisdiction to take action with regard to foreign real estate; sometimes by injunction to compel specific performance of agreements for its sale; sometimes an injunction will be granted to restrain a suit in the foreign tribunal for the recovery of such realty where situated, and even reconveyance and releases ordered in the domestic courts where the parties reside, when the contract has been fraudulently obtained by which an interest in such foreign lands has been acquired. In all such cases, however, the relief asked, or granted, must be limited by a decree enforcing personal obedience as against the defendant; it cannot in any manner affect the property situated beyond the jurisdiction."

See, also Wharton on Conflict of Laws, p. 641, 650; Story on Conflict of Laws, Sec. 544.

In support of the contention that the present suit could have been brought in the Northern District of Illinois, counsel for the appellees cited in the Circuit Court the case of Massie v. Watts, 6 Cranch, 148.

Massie v. Watts was an appeal from a decree of the Circuit Court of the United States for the District of Kentucky, in a suit brought by Watts, a citizen of Virginia, against Massie, a citizen of Kentucky, to compel the latter to convey to the former one thousand acres of land in the

State of Ohio, defendant having obtained the legal title with notice of the plaintiff's equitable title.

On page 158 is found the following statement by Chief Justice Marshall:

> "Taking into view the character of the suit in chancery brought to establish a prior title originating under the Land Law of Virginia, against a person claiming under a senior patent, considering it as a substitute for a caveat introduced by the peculiar circumstances attending those titles, this Court is of the opinion that there is much reason for considering it as a local action, and for confining it to the Court sitting within the State in which the land lies. Was this cause, therefore, to be considered as involving a naked question of title? Was it, for example, a contest between Watts and Powell, the jurisdiction of the Circuit Court of Kentucky would not be sustained. But where the question changes its character, where the defendant in the original action is liable to the plaintiff, either in consequence of contract, or as trustee, or as the holder of a legal title acquired by any species of *mala fides* practiced on the plaintiff, the principles of equity give a court jurisdiction wherever the person may be found, and the circumstance, that a question of title may be involved in the inquiry, and may even constitute the essential point on which the case depends, does not seem sufficient to arrest that jurisdiction."

There is nothing in the opinion of Justice Marshall, in Massie v. Watts, to indicate that Watts could not have brought his bill in Ohio, where the land was situated. In fact, Justice Marshall felt that "there is much reason for considering it as a local action, and for *confining* it to the Court sitting within the State in which the land lies."

A suit for the specific performance of a contract is less "local" in its nature than a suit to set aside a deed secured by fraud, but the former has been regarded as a "local" proceeding, as well as one which could be made "transitory." *Boswell's Lessee v. Otis*, 9 *Howard*, 336:

Although the judgment in that case was held to be void, yet with reference to the jurisdiction of the Court in the case of specific performance of a contract alone, the Supreme Court said:

> "Jurisdiction is acquired in one of two modes: First, as against the person or defendant by service of process; secondly, by procedure against the property of the defendant within the jurisdiction of the Court. In the latter case the defendant was not personally bound by the judgment beyond the property in question, and it is immaterial whether the proceeding against the property be by attachment or bill in chancery. It must be a proceeding *in rem*. A bill for the specific execution of a contract to convey real estate is not strictly a proceeding *in rem* in ordinary cases; but where such a proceeding is authorized by the Statute on publication without personal service of process it is substantially of that character."

Burrall v. Eames, 5 *Wis.* 260, (1856:)

Held, a suit for the specific performance of a contract for the sale of land is of a two-fold character, partly *in personam* and partly *in rem*. That the Court may enforce the contract, either by operating on the person to compel a conveyance, or may pass the title to the land by decree.

> "A suit for specific performance, like that of foreclosure, is of a two-fold character, partly *in personam* and partly *in rem*. The Court may enforce the contract, either by operating upon the person to compel a conveyance, or may pass the title of the land by decree. If the defendant is a non-resident, certainly the proper county in which to file the bill would be that in which the land is situated; and it would seem that as the sole object of the suit is to subject the specific property to the jurisdiction and control of the Court, the county in which it is situated is the proper county in which to commence the suit, although the defendant may reside in another county in the state. There is nothing in the Statute which precludes such practice; it is

agreeable to the usual practice of Courts of equity in other jurisdictions, is the most convenient and safe for all the parties, and ought to be sustained."

Gartrell v. Stafford, 12 *Neb.* 545, (1882:)

"Maxwell, J.

"This is an action to enforce the specific performance of an alleged contract for the conveyance of real estate. The land in controversy is situated in Gage County, and the plaintiff is a resident of that county, while the defendant is a resident of California. * * *

"The first objection made by the appellant is, that an action of this kind can only be brought where the defendant resides or may be summoned. But this objection is not well taken. An action to enforce specific performance of a contract for the conveyance of real estate is of two-fold character, viz: *in rem* and *in personam.* In the one case the decree of the Court operates directly upon the land. In the other, where the Court has jurisdiction of the parties, it may compel them to perform, although the land may be situated outside of the State. Story Eq. Jur. Secs. 743, 744. Bailey v. Ryder, 10 N. Y. 363; Newton v. Bronson, 13 Id. 587; Gardner v. Ogden, 22 Id. 327; Cleveland v. Burrall, 25 Barb. 532; Fenner v. Sanborn, 37 Id. 610; Burrall v. Eames, 5 Wis. 260 .There is no doubt that an action may be brought against a non-resident in the county where the land in controversy is situated."

Owen v. Hall, 13 *Ohio State,* 571, (1862:)

Action for specific performance of contract for sale of real estate. Held:

"1. The action may be brought either in the county where the land lies or in that where one of the defendants resides."

Harris v. Palmore, 74 *Ga.* 273, (1884:)

A bill for the specific performance of a contract to convey

land situated in Georgia held properly brought in the state court of Georgia against a non-resident.

"4. And even if the prayer for specific performance, and the demand that the Court direct the New York defendants to the bill to make title to complainant, made it a proceeding *in personam* against them, and, not having them in Georgia, its Courts could not well enforce the decree to compel them to execute the titles, yet there is the broad prayer for general relief—such relief as a Georgia Court can give, and that is easily given by a decree that the land is the complainant's, and thus the decree itself puts the title in complainant, and quiets her possession to the land, and removes all clouds from hef title and her quiet enjoyment of the land she bought and paid the New York people for. So, equity can settle the case, as respects the land, within Georgia jurisdiction, without forcing the defendants to do anything at all, and without any decree, except that which, by its own operation, fixes title in him who has the perfect equity to a piece of the soil of this State.

"Let it be borne in mind that the principle contended for by the able and energetic counsel for the plaintiffs in error would exclude the jurisdiction of the Courts of Georgia as well in cases against foreigners beyond seas—actual foreigners to the American Union—as to citizens of other States in the Union. Its enormity will thus become more apparent. Every foreigner to Georgia, in or out of the American Union, who owns land or other property in this state, can be made to pay any debt he owes here out of such property. It can be attached and made to pay such debt, chose in action or debt of any sort; yet the contention of the plaintiffs in error is that, while the foreigner can be forced by our Courts to pay his debts out of property here, our Courts have no power to settle land titles against him or quiet the possession thereof. It cannot be.

"5. Of course, the equity Courts of this state having jurisdiction, the Court where the land lies is that

which peculiarly has the jurisdiction to grant relief *in rem.* See 30 Ga. 440."

But the Circuit Court of the Northern District of Illinois could not give full relief in this case. The bill contains a prayer for general relief. If, on account of the intervening rights of third persons, or for any other equitable principle, the Court would refuse to cancel the leases and deeds, it is well established that the Court could and would give the complainant an equitable lien upon the properties in the hands of the defendant, the Illinois Central Railroad Company, for an amount equal to the value of complainant's stock. This relief could only be given by the Circuit Court for the Eastern District of Illinois.

Furthermore, the bill asks for the appointment of a receiver for the defendant, the Belleville & Southern Illinois Railroad Company. The entire assets of the last named company, being within the Eastern District, only the Circuit Court of that District would have jurisdiction to appoint the receiver. A suit for the appointment of a receiver is "local." East Tennessee, etc. R. Co. v. Atlanta, etc. R. Co., 49 Fed. 608.

We respectfully submit that the complainant's suit is a "local" one, that it falls directly within the express language of Section 738 of the Revised Statutes; and that the Circuit Court of the Eastern District of Illinois had jurisdiction thereof.

II.

THE DEFENDANT RAILROAD COMPANIES HAVE WAIVED THE SPECIAL APPEARANCE AND HAVE ENTERED A GENERAL APPEARANCE.

On p. 60 of the Transcript, in the order entered by the Circuit Court on December 28th, 1905, is contained the following finding of fact:

> "and the Court finds that at the argument of the pleas to the jurisdiction set down for argument and heard on the 11th day of December, 1905, the defendants, by their counsel, contended that the question of the sufficiency of the bill was in issue the same as if a demurrer to a plea had been filed. The complainant objected to any argument of the merits of the bill, and contended that the sufficiency of the bill was not in issue. The Court suggested doubt whether the sufficency of the bill was in issue and permitted the defendant's counsel to argue the question of the sufficiency of the bill in order that such argument might be considered in case the Court should conclude that the sufficiency of the bill was involved in the disposition of the pleas. Thereupon the defendant's counsel argued that the Court ought to dismiss the bill for want of equity, but no motion to that effect was made by defendants."

Complainant had filed what was in substance a demurrer to defendants' pleas to the jurisdiction. Defendants' counsel contended that a demurrer to a plea to the jurisdiction, like a demurrer to a plea to the merits, would raise the question of the sufficiency of complainant's bill, and argued, over complainant's objection, that there was no equity in the bill and that the Court should dismiss the bill for want of equity.

Defendants will doubtless contend that a general appearance was not entered because no formal motion was filed. It is not necessary to cite to this Honorable Court the vari-

ous decisions as to what acts on the part of a defendant constitute a general appearance. We assume that the defendants' counsel will not contend that a general appearance would not have been entered, if a formal motion to dismiss the bill for want of equity had been filed. Instead of filing this formal motion, defendants' counsel, at the hearing, took the position that complainant, by its own pleading, had put in issue the sufficiency of the bill, and demanded the right to, and did argue that there was no equity therein.

A formal motion is not necessary to waive a special appearance. For example, the mere consenting to a continuance of a cause will amount to such waiver. See Stanton v. Proprietors of Haverhill Bridge, 47 Vt. 172; St. Louis, etc. Ry. Co. v. Barnes, 35 Ark. 95.

The principle to be extracted from the cases is, that any act which recognizes the power of the Court over the controversy will amount to a general appearance.

3 *Ency. of Law & Proc., p.* 504:

> "Any action on the part of defendant, except to object to the jurisdiction, which recognizes the case as in Court will amount to a general appearance."

2 *Ency. of Pl. & Pr., p.* 636:

> "Any pleading to the merits by means of an answer, plea, or by any informal manner attacking plaintiff's case, is a general appearance."

In Porter v. Chicago & N. W. Ry. Co. 1 *Neb.* 14, it is said:

> "I think a defendant may appear specially to object to the jurisdiction of the Court, either over his person or the subject matter of the suit, without waiving his right to be heard on the question in bank. But if, by motion or by any other form of application to the Court, he seeks to bring its powers into action, except on the question of jurisdiction, he will be deemed to

have appeared generally. Such application concedes a cause over which the Court has power to act."

In the present case the action invoked in open Court by the defendants, a dismissal of the bill for want of equity, could only have been asked upon the supposition that the Court had jurisdiction. How could the Court have dismissed the bill for want of equity, if the Court had no jurisdiction? The position taken by the defendants was wholly inconsistent with their special pleas to the jurisdiction, and the latter were waived.

If the Court had taken the position, so eloquently argued for by the defendant's counsel, and had entered a decree dismissing the bill for want of equity, would the defendants, thereafter, have been permitted to say that they were not in court, or would the complainant have been entitled to have the decree set aside, and an opportunity to argue the equity of the bill? If a defendant, by merely consenting to a continuance, enters a general appearance, does he not do so where, by his eloquent appeal, he induces the Court to enter a dismissal on the merits? Nor does the fact that these defendants failed in their appeal, change the situation. The defendants secured the advantage of an elaborate argument of the merits of complainant's bill, and they must bear the disadvantages. That the defendants gained an improper advantage by the argument of the merits of the bill will be seen by reading the decree entered by the Circuit Court on December 18th, 1905.

"It is ordered, adjudged and decreed by the Court that the said respective pleas of the defendants herein are sufficient in law and do deprive this Court of jurisdiction of the persons of the said defendants and each of them. *And the Court having looked into the bill of the complainant to determine if a local action is therein stated, doth consider, order, adjudge and decree that the facts in said bill stated and contained are*

insufficient in law or equity as grounds for setting aside or concelling the several instruments therein described, or either of them, and the said suit is not local to this district, and therefore the suit is dismissed for want of jurisdiction. (The italics are inserted.)

In other words, the Circuit Court seems to hold that the suit is not local, because there is no equity in complainant's bill. By arguing the merits of the bill, counsel for the defendants evidently scored a point.

We respectfully submit that the defendants have endeavored to call into action a power of the Court which could only be exercised upon the assumption that the Court had jurisdiction and, therefore, the defendant Railroad Companies have waived their special appearance, and have entered a general one.

III.

IT APPEARS FROM THE EVIDENCE INTRODUCED UPON DEFENDANTS' PLEAS TO THE JURISDICTION THAT THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY IS A RESIDENT OF THE EASTERN DISTRICT OF ILLINOIS.

In Section 14 of the Act of Congress approved March 3rd, 1905, 33 Stat. 992, creating the Eastern District of Illinois, it is provided "that the courts and judges of said Eastern District shall, within said District, respectively possess the same jurisdiction and powers, civil, criminal, equitable or otherwise, and perform the same duties as are now respectively possessed and performed by the Circuit and District Courts and Judges of the United States of the Southern District of Illinois."

Section 10 par. 2, of the same Act, defining the jurisdiction of the courts of the Southern District, provides:

> "That all civil suits not of a local nature, and criminal prosecutions, must be brought in the division of the said Southern District of Illinois where the defendant or defendants reside, or the offense is committed: but if there are two or more defendants in civil suits residing in the different divisions or districts, the action may be brought in either in which either of the defendants may reside."

In the case of Petri v. Creelman Lumber Company, 199 U. S. 487, this Honorable Court held that a clause similar to the last clause of Section 10, par. 2, cited above, gave the Northern District of Illinois jurisdiction where one of several defendants reside in the Northern District, and the other defendants reside in the Southern District. Section 10 of the Act of March 3rd, 1905, cited above, therefore, conferred jurisdiction on the Circuit Court of the Southern District, where one of several defendants is a resident thereof, and the other defendants are residents of the Northern Dis-

trict. And Section 14 of the same Act conferred the same jurisdiction on the Circuit Court of the Eastern District of Illinois.

Therefore, if the defendant, the Belleville and Southern Illinois Railroad Company, was a resident of the Eastern District of Illinois at the time complainant's bill was filed, the Court had jurisdiction of the other two defendants, the St. Louis, Alton and Terre Haute Railroad Company, and the Illinois Central Railroad Company, even if the two last named defendants were residents of the Northern District. To the evidence upon the question of the residence of the Belleville Company, the attention of the Court is now directed.

The only witness called upon the question of the residence of the Belleville Company was W. G. Bruen, Assistant Secretary, and his testimony is found on pages 63-71 of the Transcript of Record. There is no dispute as to the facts. The situation is as follows:

The Acts of Illinois of 1857 and 1869, creating the Belleville Company, made no provision for its residence. The Company was authorized to construct a railroad, every point of which was within the Eastern Judicial District, and the road actually constructed, viz., from Belleville, in St. Clair County, to Du Quoin, in Perry County, is wholly within said District. After the incorporation of the Belleville Company it is conceded that its residence and principal place of business were located at Belleville its western terminus, and there remained until October 23rd, 1896, some thirty years. About this time the Illinois Central Railroad Company secured the controlling interest in the stock of the Belleville Company, elected its own directors, filled the executive offices with its own officials and moved the stock transfer books, and the minute books of the directors and stockholders' meetings to Chicago, where they were stored away in the office of the Assistant Secretary of the Illinois

Central. On October 23rd, 1896, while the Belleville Company was still the owner of its railroad from Belleville to Du Quoin, the following resolution was passed at a stockholders' meeting:

> "By-law No. 1. The Annual meetings of the stockholders for the election of Directors and transaction of general business shall be held at the principal office of the Company in Chicago, on the third Wednesday of October each year. * * *"

During the year 1897 two formal meetings of the stockholders and two of directors were held in Chicago. Except these meetings and except the stock and minute books, mentioned above, the Belleville Company has never transacted any business, and never owned any property in Chicago. On these facts the defendants rely to establish the residence of the Belleville Company at Chicago, in the Northern District.

The first position taken by complainant is that it is legally *impossible* for a railroad company to locate its residence at a place, which is not upon its authorized line of road. The charter of a railroad company authorizes it to be a railroad company between two points, and not elsewhere. There are many incidental forms of business, such as employment of agents, etc., which could be performed anywhere, but the primary powers, the actual franchise of a railroad company can be exercised only between the points stated in its charter. In this sense, a railroad company is unlike a manufacturing, or ordinary business corporation, which can exercise its franchise anywhere, and become analogous to a municipal corporation. Investigation has not disclosed any case in which this question has been raised, nor has a case been discovered in which any other railroad company has attempted to locate its residence anywhere except upon its authorized route. In Galveston etc. Ry. Co. v. Gonzales, 151 U. S. 496, cited by counsel for the defendants in the

Circuit Court, it was merely held, when the railroad extends into two Federal Districts, the Company does not thereby become a resident of both districts, but of that district in which the Company chooses to locate its residence. In that case, the residence was located upon its legally defined route.

If this Honorable Court should hold that the residence of a railroad company is not confined to some point upon its authorized route, we respectfully predict a very general exodus of railroad companies from their present residences to the remotest and most inaccessible regions of their respective States.

In the second place, the complainant urges that there is no evidence of a change of residence on the part of the Belleville Company from Belleville to Chicago. At best, the evidence merely tends to show a change of its principal place of business, and the principal place of business is not a conclusive criterion of the residence of either a corporation or an individual.

Guinn v. Iowa Cent. Ry. Co., 14 *Fed. Rep.* 323 (*C. C. S. D. Iowa*, 1882:)

> "Love, D. J. The principle laid down in the case of McCabe v. Ill. Cent. R. R. Co., 13 Fed. Rep. 827, is decisive of the present case. The defendant is an Iowa corporation, having its principal place of business at Marshalltown, in the central division of the district of Iowa. Process was served upon its agent, C. M. Miller, at the town of Albia, in the southern division, returnable at Keokuk. The late Act of Congress, creating Circuit Court jurisdiction in the several divisions of the district of Iowa, provides, in substance, that suit shall be brought in the division in which the defendant has his residence. The defendant herein now moves to have the cause transfered to the central division on the ground that the residence of the defendant is at the principal place of business, which is in the central di-

vision. In addition to what is shown in the case of McCabe, supra, it may be said that the 'principal place of business' is no test of residence, whether of a corporation or natural person. A natural person might reside in one state and have his principal, or, for that matter, his sole place of business in another state. I presume that thousands of persons reside in Jersey City and have their principal place of business in New York, and many, no doubt, reside beyond the limits of the State of New York and carry on their *sole* business in the City of New York.

"The motion is denied."

The principles of the law of domicile require the concurrence of three elements to constitute a change of residence, *animus manendi, animus non revertendi,* and the actual location of a new domicil. As expressed by Mr. Jacobs in his work on the Law of Domicil, Sec. 125:

"All jurists agree that a change of domicil, of whatever grade, is a question of 'act' or 'fact,' and intention, and cannot be accomplished without the concurrence of both."

Assuming that the evidence discloses the requisite intention, the evidence does not disclose any unequivocal act on the part of the Belleville Company changing even its principal place of business. The by-laws of October 23rd, 1896 (Transcript p. 54), merely prodides that the annual meeting of stockholders "shall be held at the principal office of the Company in Chicago," which merely assumes the existence of such a place of business. But the evidence shows that on October 23rd, 1896, there was no principal place of business of the Belleville Company in Chicago. The effect of the by-laws was merely to direct that the stockholders' meetings should be held in Chicago, which would have been legal irrespective of the location of the principal place of business there. A change of the principal place of business

cannot be established by inference, in the face of the fact that the Belleville Company did not have, nor has it ever had, any business or assets in Chicago.

Furthermore, the Legislature of the State of Illinois has expressly provided the manner in which a corporation may change its principal place of business, and the Belleville Company did not comply, or attempt to comply with those provisions.

Chapter 32, Sec. 50, Revised Statutes of Illinois (Hurd, 1899), page 442, provides as follows:

"An Act to Provide for Changing of Names, for Changing the Places of Business, for Increasing or Decreasing the Capital Stock, for Increasing or Decreasing the Number of Directors, for Enlarging or Changing the Objects for which such Corporations were Founded, and for the Consolidation of the Incorporated Companies. Approved and in force March 26, 1873, as Amended by Act Approved June 6, 1889.

"Meeting of Stockholders, For.—Restriction. 1. That whenever the Board of Directors, managers or trustees of any corporation existing by virtue of any general or special law of this state, or any corporation, wherever organized, by virtue of any law of this State, may desire to change the name, to change the place of business, to enlarge or change the object for which such corporation is founded, to increase or decrease the capital stock, to increase or decrease the number of directors, managers or trustees, or to consolidate said corporation with any other corporation now existing or which may hereafter be organized, they may call a special meeting of the stockholders of such corporation, for the purpose of submitting to a vote of such stockholders the question of such change of name, change of place of business, enlargement or change of the object for which such corporation was formed, increase or decrease of the number of directors, managers or trustees, increase or decrease of the capital stock, or consolidation with some other corporation, as the case may

be; and further, that eleemosynary or religious corporations for educational purposes, acting under the general law or by virtue of a special charter, are authorized to change the time or manner of electing the trustees, and to allow the alumni of said corporation to vote in the election of the trustees, or part thereof. Provided, that in changing the name of any other corporation the provisions hereof, no name shall be assumed or adopted by any corporation similar to * * * * * * * * *; and provided further, that no corporation shall by virtue hereof, change its place of business from any town, county or municipality where such town, county or municipality, or any of the inhabitants thereof, or any person or persons interested therein, shall have donated or in any manner contributed any money or other valuable thing to induce such corporation to locate in such town, county or municipality. * * *.

"*Notice of Meeting.* Sec. 2. Such special meeting shall be called by delivering personally, or depositing in the post office, at least thirty days before the time fixed for such meeting, a notice properly addressed to each stockholder, signed by a majority of said directors, managers or trustees, stating the time, place and object of such meeting. A general notice of the time, place and object of such meeting shall also be published for three consecutive weeks in some newspaper printed in or nearest the county in which the principal business office of said corporation is located.

"Manner of Voting.—Two-Thirds necessary. 3. At any such meeting stockholders may vote in person or by proxy, each stockholder being entitled to one vote for each share of stock held by him; and votes representing two-thirds of all the stock of the corporation shall be necessary for the adoption of the proposed change of name, place of business, enlargement or change of the object for which such corporation was founded, number of directors, managers or trustees, amount of capital stock, or consolidation with some other company.

"Certificate of vote filed.—Changes Accomplished.—

General Law. 4. If at any regular annual meeting or at any time and place specified in said notice of the special meeting called for that purpose, said propositions or any of them be submitted to a vote, and if it shall appear that two-thirds of all the votes represented by the whole stock of such corporation are in favor of the propositions or of any of them so submitted, *a certificate thereof,* verified by the affidavit of the President and under seal of said corporation shall be filed in the office of the Secretary of State, and a like certificate filed for record in the office of the Recorder of Deeds of the county where the principal business office of such corporation is located. And upon the filing of said certificate the changes proposed and voted for at such meeting as to name, place of business, enlargement or change of the object for which such corporation was founded, increase or decrease of the capital stock, increase or decrease of the number of directors, managers or trustees, or consolidation with some other company, shall be and is hereby declared accomplished in accordance with said vote of the stockholders; and provided, further, that any corporation other than corporations for manufacturing purposes, availing itself of or accepting the benefits of or formed under this Act, except mere change of name, shall be subject to the general laws of this state now in force, or which may hereafter be passed, regulating corporations of like character.

"Notice of Change. 5. Such corporation shall upon the filing of said certificate, cause to be published in some newspaper in or nearest the county in which said principal office is located, a notice of such changes of corporation for three consecutive weeks.

"Consolidation of Railroad Companies.—Notice. 8. Whenever any railroad corporation desires to conconsolidate with any other railroad corporation, by virtue of the provisions of this Act, a notice as provided by Section 2 of this Act shall be given at least sixty days before the time fixed for such meeting, and the general notice as provided by said Section 2 shall be published for nine consecutive weeks; provided that

> any railroad corporation shall not consolidate their stock, property or franchise with any other railroad corporation owning a parallel or competing line."

For an Illinois corporation, therefore, to legally change its place of business, the following steps are required: a *special* meeting of the stockholders, for that purpose; a thirty day personal notice to each stockholder, signed by a majority of the directors, stating the time, place and *object* of the meeting; publication of such notice; a two-thirds vote for the proposed change; certificate of such change filed with the Secretary of State, and Recorder of Deeds of county where the principal business office is located; and a publication of such change. The Statutes provide that the change shall be accomplished *when* the certificate thereof is filed

The evidence does not show even an attempt on the part of the Belleville Company to comply with these provisions. The meeting of stockholders on October 23rd, 1896, was the regular annual meeting, not a *special* meeting (Transcript, p. 64); no notice to the stockholders is shown and no certificate filed. And more than this, as shown above, there was no resolution expressly changing the principal place of business.

At the hearing in the Circuit Court, counsel for defendants urged that the Belleville Company was created by a special Act, and therefore not subject to the general statutes. It would be a new principle of law, if a special charter freed a corporation from future regulation by general statute. Furthermore, Section 1 expressly includes corporations "existing by virtue of any general or special law of this State," and railroad corporations are not excluded. In fact, the latter are expressly mentioned in Section 8.

The propriety of regulations such as are contained in the aforesaid sections from the Statutes of Illinois, is not open to dispute. If the position of the defendants is correct, if

a railroad corporation can locate its residence anywhere within the state, and if the change of residence could be accomplished by expressing the stock transfer and minute books to the new destination, accompanied by the passing of a formal resolution, the effect upon those seeking to hold the corporation for its wrongs is not difficult to imagine. If the defendant should be desirous of avoiding any particular suit, it could change its residence from district to district as fast as the complainant could change courts.

We respectfully submit:

1. That the residence of a railroad company must be at some point upon its authorized route.

2. That the evidence does not show a change of residence on the part of the Belleville Company, from the Eastern District to the Northern District of Illinois, tested either by the general principles of the law of domicil, or by the express provisions of the Illinois Statutes.

IV.

THAT BY SECTION 14 AND 10 OF THE ACT OF CONGRESS APPROVED MARCH 3, 1905, CREATING THE EASTERN DISTRICT OF ILLINOIS, THE CIRCUIT COURT OF SAID DISTRICT WAS GIVEN JURISDICTION OF ALL CAUSES IN WHICH THE DEFENDANT IS FOUND WITHIN THE DISTRICT.

As stated previously, Section 14 of the Act of Congress approved March 3, 1905, 33 Stat. 992, creating the Eastern District of Illinois, conferred upon the courts of said District the same jurisdiction and powers as possessed by the courts of the Southern District of Illinois. Section 10. par. 2 of the same Act defines the jurisdiction and powers of the courts of the Southern District, and is in full as follows:

> "That all suits not of a local nature, and criminal prosecutions, must be brought in the division of the said Southern District of Illinois where the defendant or defendants reside, or the offense is committed; but if there are two or more defendants in civil suits residing in the different divisions or districts, the action may be brought in either in which either of the defendants may reside. When the defendant is a non-resident of the District, action may be brought in either division of said District wherein the defendant may be found."

By the express language used in the last clause of par. 2, Section 10, quoted above, the Circuit Courts of the Southern District are given sweeping jurisdiction in all cases where a non-resident defendant is *found* within the division in which the Court is sitting.

We quote the following language from the case of *Petri vs. Creelman Lumber Co.*, 199 *U. S.* 487:

> "But that Congress did not deem that a special provision as to a particular state or states was irreconcilable with the existence of the general rule, is conclusively shown by the fact that after the adoption of the

Act of 1875 various special acts were passed dividing particular states into two or more districts, or dividing a district or districts into divisions, and expressly declaring that in civil suits not of a local nature two or more citizens of the state might be joined as defendants, although residing in different districts of the state, and that siuit might be brought in either district. * * * * * *

"Indeed the legislation of Congress since the passage of the Act of 1887, under the hypothesis of the repeal of Section 740 of the Revised Statutes by that Act, also demonstrates that it was considered that the passage of a special statute as to a particular state, vesting jurisdiction in the courts within the state, where two or more defendants resided in different districts therein, was not irreconcilable with the existence of a general rule to the contrary in a statute having a general operation.

The language of the last clause of par. 2, Section 10, cited above, is broad enough to cover any case in which a non-resident defendant, even a resident of another State than Illinois, is *found* within the Eastern District of Illinois. The language of the Court in the opinion in the Petri case was directed to a clause similar to the previous clause of Section 2, in which Congress is manifestly dealing with the jurisdiction as between two districts within the same state. We respectfully submit, however, that it is within the power of Congress to pass a special act giving to a district in one state as broad a jurisdiction as was contained even in the original judiciary act, that is, in any case in which a defendant should be "found" within the District.

Another view of the last clause of par. 2, Section 10, would be that Congress was referring merely to a case in which a defendant residing in one district of Illinois should be "found" in another District. In this view the last clause of par. 2, Section 10, would be brought within the quotation cited above from the Petri case.

By the second clause of par. 2, Section 10, Congress covered a case in which there were two or more defendants residing in different districts, and provided that suit might be brought in either district in which one of the defendants resided. The procedure in such a case would be to serve process on the non-resident defendants at their place or places of residense in the other district. The interpretation of the last clause of Sec. 10, par. 2, which we have suggested above, is not inconsistent with the second clause. By the express words of the last clause Congress covered a case in which a resident of one district was found and served in another district. In such a case, unless the defendant were found within the district, he could not be brought within the second clause, there being no resident defendant.

In the present case all three defendants Railroad Companies, were found and served in the Eastern District of Illinois, and if the construction suggested above of the last clause of par. 2, Section 10, be correct, the Circuit Court of the Eastern District would have jurisdiction of this cause, irrespective of all other questions heretofore discussed.

It has occurred to counsel for complainant that by the last clause of par. 2, Section 10, Congress might have intended to refer to a case in which plaintiff was a resident of the district, and was merely covering the question of the venue of such a suit as between the different divisions of the district of the plaintiff's residence. The latter interpretation would coincide with the language of Section 3, of the Act of April 25, 1882 (22 Stat. p. 47), creating the Northern and Southern Judicial Districts of the State of Georgia, which is as follows:

> "But if there are two or more defendants, some residing in the northeastern division and others residing in any other portion of said Southern District of

Georgia, the action may be brought in any one of the divisions in which any one of the defendants reside. When the defendant is a non-resident of either division, action may, *if plaintiff is a citizen of the District*, be brought in that division wherein the defendant may be found."

Counsel for complainant do not feel certain as to the proper interpretation of the last clause of par. 2, Section 10, above cited, but in view of the decision in the Petri case, and in view of the express language of said clause providing that "when the defendant is a non-resident of the District, action may be brought in either division of said District wherein the defendant may be found," it is only proper to seek a decision by this Honorable Court on this point.

Appellant respectfully prays that the decree of the Circuit court of the Eastern District of Illinois, dismissing the appellant's bill for want of jurisdiction be reversed, at defendant's cost, and this cause remanded with instructions to said Circuit Court to take jurisdiction of appellant's bill.

Respectfully submitted,

EDWARD C. ELIOT,
WILLIAM B. SANDERS,
Counsel.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 238.

CITIZENS SAVINGS AND TRUST COMPANY,
Appellant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY and ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY,
Appellees.

Appeal from the Circuit Court of the United States, for the Eastern District of Illinois.

BRIEF FOR APPELLEES.

J. M. DICKINSON,
BLEWETT LEE,
Counsel.

The Courier-Journal Printing Co.

IN THE

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CITIZENS SAVINGS AND TRUST COMPANY, *Appellant*, vs. ILLINOIS CENTRAL RAILROAD COMPANY, BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD COMPANY and ST. LOUIS, ALTON AND TERRE HAUTE RAILROAD COMPANY, *Appellees*.	Appeal from the Circuit Court of the United States, for the Eastern District of Illinois.

BRIEF FOR APPELLEES.

Statement of Facts.

The complainant, a Trust Company, in its capacity as a stockholder of the Belleville and Southern Illinois Railroad Company, hereinafter called the Belleville Company, on August 24, 1905, filed a bill in equity in the Circuit Court of the United States for the Eastern District of Illinois, against the Belleville Company, the Illinois Central Railroad Company, hereinafter called the Illinois Company, the St. Louis, Alton and Terre Haute Railroad Company, hereinafter called the

Terre Haute Company, and the United States Trust Company of New York, which last named company, however, was not served, for an accounting, seeking to cancel certain leases and conveyances covering the former railroad of the Belleville Company and praying incidentally for the appointment of a receiver. In what follows the references by page are to the printed record. The bill sets forth that the Belleville Company had formerly issued common stock in the aggregate of $100,000 par value to Perry County, Illinois, in return for certain bonds of that county (2); that by reason of failure to comply with the conditions imposed in the issue of the bonds of Perry County the bonds were declared invalid (3); that thereupon, at the suit of one Stebbins, a stockholder in the Belleville Company, the shares of stock owned by Perry County were cancelled (3); that thereafter the complainant as the owner of certain of the bonds of Perry County obtained a decree in the United States Circuit Court for the Southern District of Illinois, requiring the Belleville Company to issue to complainant an amount of its common stock proportional to the par value of the bonds of Perry County which had been declared invalid and were held by the complainant (4) amounting to 400 shares. The bill is brought on behalf of all stockholders who choose to join (4) and alleges that on October 1, 1866, the Belleville Company made a lease to the Terre Haute Company of the railroad property of the Belleville Company for a period of 999 years, upon the basis of a yearly rent based upon the gross earnings of the property (5). The bill further alleges that the Belleville Company has issued $1,275,000 preferred stock, en-

titled to receive 8 per cent. annual dividends before ever any dividends were declared upon the common stock, and that under the lease various dividends have been paid from time to time upon the preferred stock (6) and that if this lease had never been altered, under its terms enough rent would now be earned to pay dividends upon the common stock as well (7); that in 1895 the Illinois Company "fraudulently" for the purpose of procuring a railway of its own into East St. Louis acquired a sufficient number of the other shares of stock of the Belleville Company and of the shares of stock of the Terre Haute Company to control those companies (7) and caused on or about April 4, 1896, a new lease to be made dated October 1, 1895, for a term of 99 years (Ex. A, 19) whereby the railroad of the Belleville Company was leased to the Illinois Company under an annual rental, by which the Illinois Company agreed to pay the holders of the preferred stock of the Belleville Company an annual dividend of four and eight-tenths per cent. (4.8%), and also to pay the interest upon certain bonds of the Belleville Company (9); that this was not a fair rental for the properties (9); that subsequently, by reason of the control of the Terre Haute Company and the Belleville Company by the Illinois Company corporate action was taken (10) pursuant to which, on September 10, 1897, the Belleville Company conveyed its railroad to the Terre Haute Company in consideration of $1,400,000 of 4% bonds of the Terre Haute Company (Ex. B, 34) a consideration alleged to be grossly inadequate (11); that afterwards on September 15, 1897, the Terre Haute Company executed a supplemental indenture of lease, confirming the former lease dated

October 1, 1895, to the Illinois Company (Ex. C, 38). The bill further alleges (12) that on February 17, 1904, the Terre Haute Company conveyed all of its railroad properties to the Illinois Company (Ex. D, 46). It is also alleged that the annual interest of the $1,400,000 par value bonds of the Terre Haute Company is sufficient only to pay 4½% upon the preferred stock of the Belleville Company and is insufficient to pay anything upon the common stock (12); that the Belleville Company is under the control of the Illinois Company (13); that the Belleville Company has ceased to do business or file any reports with the Railroad and Warehouse Commissioners of the State of Illinois (13); that a demand upon the directors of the Belleville Company would be futile (14); that on September 15, 1897, the Illinois Company and the Terre Haute Company executed a deed of trust to the United States Trust Company of New York, securing an issue of $15,000,000 of Gold Bonds, and that among the properties conveyed were the ralroad properties formerly of the Belleville Company (14). The bill then sets out a long list of specific interrogatories, and concludes with a prayer (17) for a decree "cancelling and declaring forever void and of no effect the form of lease bearing date October 1, 1895" between the Terre Haute Company, the Illinois Company, and the Belleville Company, "so far as said indenture affects or purports to affect in any way the properties, franchises, rights or liabilities of the Belleville Company; cancelling and declaring forever void and of no effect the form of deed bearing date the 10th day of September, 1897," between the Belleville Company and the Terre Haute Company, "so far as said indenture af-

fects or purports to affect in any way the properties, franchises, rights or liabilities of the Belleville Company; cancelling and declaring forever void and of no effect the form of supplemental lease bearing date September 15, 1897," between the Terre Haute Company and the Illinois Company, "so far as said indenture affects or purports to affect in any way the properties, franchises, rights or liabilities of the Belleville Company; and cancelling and declaring forever void and of no effect the form of deed bearing date the 17th day of February, 1904," between the Terre Haute Company and the Illinois Company, "so far as said indenture affects or purports to affect in any way the properties, franchises, rights or liabilities of the Belleville Company; and that" the Belleville Company "be ordered to return and deliver up and account for whatever consideration it may have received under the aforesaid forms of deeds and leases to the party or parties from whom such consideration may have moved."

"And your orator prays a decree of this Honorable Court, ordering the defendant" the Illinois Company "to account for and pay over to" the Belleville Company, "or to a receiver to be appointed for said" Belleville Company, "such proportion of the yearly gross earnings as said" Belleville Company "is entitled to under the lease executed by and between" the Belleville Company and the Terre Haute Company, "bearing date October 1, 1866; such accounting to cover each fiscal year, or part thereof, from the time when" the Illinois Company "first acquired the railroad properties of the Belleville Company as lessee or sub-lessee under the lease executed on or about the

1st day of April, 1896, up to the time of such accounting."

"Your orator further prays an order appointing a receiver for" the Belleville Company, "with the usual powers of such receivers; and that" the Illinois Company, "through its officers and agents, to be ordered to surrender and deliver up to said receiver all the corporate assets, books, papers and everything that rightfully belongs to" the Belleville Company, "and that" the Illinois Company "be ordered to account to such receiver, as is hereinbefore prayed. That the defendant" the Illinois Company, "its officers and agents, be restrained from further violating the rights of your orator, and be ordered, directed and restrained in particular from interfering in any way with said receiver, or with the operation of said Belleville Company as an independent and separate railroad company; and for such other and further relief as the equity of the case may require and to your Honors may seem meet and just."

The attention of the court is called to the fact that while the Terre Haute Company is a party defendant, the bill does not pray a cancellation of the original lease by the Belleville Company to the Terre Haute Company, dated October 1, 1866, but prays instead that there shall be an accounting by the Illinois Company upon the basis of that lease (18). The Belleville Company (53), the Terre Haute Company (54), and the Illinois Company (55) each pleaded to the jurisdiction that it was not an inhabitant of the Eastern District of Illinois and did not reside therein, but that each defendant was a corporation organized under the laws

of the State of Illinois, and an inhabitant of the Northern Division of the Northern District of Illinois, residing therein at Chicago, where the corporate meetings of the defendant are held and its corporate business transacted. The complainant set down the pleas for argument (57). The court rendered a decree that the pleas were sufficient to deprive the court of jurisdiction, and "the court having looked into the bill of complaint of the complainant to determine if a local action is therein stated, doth consider, order, adjudge and decree that the facts in said bill stated and contained are insufficient in law or equity as grounds for setting aside or cancelling the several instruments therein described or either of them, and the said suit is not local to this district, and therefore" dismissed the bill for want of jurisdiction, with costs (57). The complainant moved to set aside this order (59) and at the hearing of this motion the court entered the following order (60):

> "It is ordered that the motion be allowed, as to so much of said decree as dismisses the suit for want of jurisdiction and leave is hereby granted complainant to file replication to said pleas, and the court finds that at the argument of the pleas to the jurisdiction set down for argument and heard on the 11th day of December, 1905, the defendants by their counsel contended that the question of the sufficiency of the bill was in issue the same as if a demurrer to a plea had been filed. The complainant objected to any argument of the merits of the bill and contended that sufficiency of the bill was not in issue. The court suggested a doubt whether the sufficiency of the bill was in issue, but permitted the defendants' counsel to argue the question of the sufficiency of the bill in order that such argument might be considered in case the court should conclude that the suf-

> ficiency of the bill was involved in the disposition of the pleas. Thereupon the defendants' counsel argued that the court ought to dismiss the bill for want of equity, but no motion to that effect was made by defendants."

The complainant then filed replications taking issue upon the pleas (61). Certain evidence was taken in open court upon the question of the inhabitancy and residence of the Illinois, Belleville and Terre Haute Companies, which will be found in the record beginning at page 63. In regard to the Belleville Company the evidence was that the last stockholders' and directors' meetings of that company were held in Chicago, and that the by-laws provided for the annual meetings of the company to be held there; that the books of the company are kept in Chicago (64); that the Belleville Company no longer operates a railroad, but that the railroad which it formerly owned extended between Belleville and DuQuoin, in Illinois (65); that the principal place of business of the Belleville Company was changed from Belleville, Illinois, to Chicago, in 1896 (68). The evidence in regard to the present by-laws, place of meetings and of the corporate books of Terre Haute Company is to the same effect (71) and the same is true in regard to the Illinois Company (73). It was brought out by complainant that the Belleville Company and the Terre Haute Company use the office of the Illinois Company. After hearing the evidence the court found that the companies named were at the commencement of the suit, and are, inhabitants of the Northern District of Illinois, sustained the pleas to the jurisdiction, and dismissed the bill for want of jurisdiction at the complainant's costs (74.) At page 79 of the record

appears a certificate that the order of dismissal "is based solely on the ground that this court, in its opinion, has no jurisdiction in this suit."

The Nature of the Bill.

From the foregoing statement of facts it appears that the bill is one to cancel a lease and supplemental lease and two deeds on the ground of fraud, for an accounting upon the basis of an earlier lease which would remain in force upon the cancellation of the instruments already mentioned, for the appointment of a receiver of the corporate assets of the lessor company, and for an injunction against interference with the operation of the lessor company as an independent and separate railroad company. Attention is called to the fact that there is no prayer for the operation of the railroad of the lessor company as a separate railroad by the lessor company, and that if all the relief prayed for in the bill were granted, the railroad formerly belonging to the Belleville Company would remain leased to another company and subject to the right of that company to possess and operate the railroad, so that the corporate assets which a receiver would receive, if appointed as prayed for in the bill, would not include the railroad property formerly owned by the Belleville Company.

The authorities generally upon the jurisdiction of equity over suits affecting real property in another state or country will be found collected in an elaborate note in 69 L. R. A., 673 (1905). Among the instances there collected of such jurisdiction are the creation and enforcement of trusts,

substitution of trustees, suits for specific performance, to remove cloud upon title, to cancel a void mortgage, foreclosure of mortgage or other lien, suits to redeem, to reform deeds, to have a deed declared a mortgage, for relief from fraud, for injunction, for accounting and incidental relief by requisition of conveyance, for partition, for appointment of a receiver, and other instances. The leading American case upon the subject is *Massie* v. *Watts*, 10 Cranch., 148, 158 (1810), in which suit was brought in the United States court for the District of Kentucky by a citizen of Virginia against a citizen of Kentucky to compel the latter to convey to the former 1000 acres of land located in Ohio on the ground that the defendant, while being the agent of the plaintiff, had obtained the issue of a patent to himself for lands which he ought to have located for the plaintiff. It was objected that since the lands were in Ohio the court was without jurisdiction. Chief Justice Marshall, in delivering the opinion of the court said:

> "Was this cause, therefore to be considered as involving a naked question of title, was it, for example, a contest between Watts and Powell, the jurisdiction of the Circuit Court of Kentucky would not be sustained. But where the question changes its character, where the defendant in the original action is liable to the plaintiff, either in consequence of contract, or as trustee, or as the holder of a legal title acquired by any species of *mala fides* practiced on the plaintiff, the principles of equity give a court jurisdiction wherever the person may be found, and the circumstance, that a question of title may be involved in the inquiry, and may even constitute the essential point on which the case depends, does not seem sufficient to arrest that jurisdiction."

This case was followed by Mr. Justice Story in *Briggs* v. *French*, 1 Sumn., 504, Federal Case No. 1870 (1833), a bill to set aside a fraudulent attachment and levy upon property situated in another state.

A court of equity will sustain a suit to discharge a cloud upon title to land situated in another state:

Remer v. *MacKay*, 35 Fed. Rep., 86, 87 (1888), in which Judge Blodgett clearly points out that the proceeding is *in personam* to compel the defendant to release or discharge a cloud upon the title.

As said by Mr. Justice Gray in *Hart* v. *Sansom*, 110 U. S., 151, 155 (1884):

> "Upon a bill for the removal of a cloud upon title, as upon a bill for the specific performance of an agrement to convey, the decree, unless otherwise expressly provided by statute, is clearly not a judgment *in rem*, establishing a title in land, but operates *in personam* only, by restraining the defendant from asserting his claim, and directing him to deliver up his deed to be cancelled, or to execute a release to the plaintiff. Langdell Eq. Pl. (2nd ed.), paragraphs 43, 184; *Massie* v. *Watts*, 6 Cranch., 148; *Orton* v. *Smith*, 18 How., 263; *Vandever* v. *Freeman*, 20 Tex., 334."

In *Montgomery* v. *United States*, 36 Fed. Rep., 4, 5 (1888), Judge Deady said:

> "This is not a local action to recover the possession of the land, but a transitory one to enforce the specific performance of a contract concerning the same. In such a proceeding a court of equity operates by its decree *in personam* on the defendants, and not *in rem*, on the subject-matter; and therefore it matters not whether the land which is the subject of the contract is within the territorial jurisdiction of the court or not."

In a suit by a telegraph company for the specific

performance of telegraph right of way contracts with certain railroad companies, where such companies are subject to the jurisdiction of the court, it is immaterial that a portion of the property is beyond the court's territorial jurisdiction.

W. U. Tel. Co. v. *C. C. & St. L. Ry. Co.*, 137 Fed. Rep., 435, 437 (1905). In this case Judge Kohlsaat quotes the following passage from *Phelps* v. *McDonald*, 99 U. S., 298, 308 (1878):

> "Where the necessary parties are before a court of equity, it is immaterial that the *res* of the controversy, whether it be real or personal property is beyond the territorial jurisdiction of the tribunal. It has the power to compel the defendant to do all things necessary, according to the *lex loci rei sitae*, which he could do voluntarily, to give full effect to the decree against him.
>
> Without regard to the situation of the subject-matter, such courts consider the equities between the parties, and decree *in personam* according to those equities, and enforce obedience to their decrees by process *in personam*."

In *Muller* v. *Dows*, 94 U. S., 444, 449, it is held that a federal court, sitting in one state has power to order the foreclosure of a railroad situated within two states, and it has been held by the Circuit Court of Appeals, Fifth Circuit, for the Western District of Texas, that a federal court of equity has power to foreclose a mortgage on a toll bridge, part of which is situated within the Republic of Mexico. *Int. Bridge & Tramway Co.* v. *Holland Trust Co.*, 81 Fed. Rep., 422 (1897), in which the court simply cite *Muller* v. *Dows*, as conclusive of the matter.

See, also, *Miller & Lux* v. *Rickey*, 127 Fed. Rep., 573, 579-580 (1904), in which a suit was entertained in the

United States Circuit Court for the District of Nevada to enjoin a diversion of waters in the State of California.

It has been held that a suit for specific performance of a contract to convey land must be brought in the district of the residence of the plaintiff or the defendant. The land was in Indiana, the plaintiff was a citizen of Illinois and the defendant a citizen of Kentucky. *Municipal Inv. Co.* v. *Gardner,* 62 Fed. Rep., 954 (1894). In this case the court said:

> "The present action is not local but transitory and does not seek any relief except a decree operating *in personam.* The bill is dismissed for want of jurisdiction."

This principle is perfectly well established and a vast number of cases might be collected from the state courts. Only a few will be cited, for the purpose of illustration.

In *State ex. rel. Campbell* v. *Superior Court,* 7 Wash., 300 (1893), it was held that a bill to enforce a trust in lands and compel an accounting was transitory. The court say:

> "That the enforcement of trusts and an accounting thereunder may be brought wherever the trustee can be found is well established by the authorities."

In *Johnson* v. *Gibson,* 116 Ill., 294 (1886), at page 301, an unusually luminous discussion by Mulkey, J., will be found, too long for quotation here, the court pointing out that "directing a conveyance of the property does not directly affect the title of the property, yet the enforcement of it does result in a complete change of title." The court "simply declares a cer-

tain transaction relating to land fraudulent as between the complainant and the offending parties, and thus removes an obstruction to the creditor's legal remedy."

In the case of *White Star Mining Co.* v. *Hultberg*, 220 Ill., 578, 599 (1906), it was held that the court had power to enforce specific performance of an arbitration award in relation to lands situated in Alaska. The court say:

> "In the case of *Alexander* v. *Tolleston Club*, 100 Ill., 65, we said (p. 77): 'It is well settled that courts of equity may decree specific performance of contracts respecting land situated beyond the jurisdiction of the state where the suit is brought. The ground of this jurisdiction, as said by Story, is, that courts of equity have authority to act upon the person; and although they cannot bind the land itself by their decree, yet they can bind the conscience of the party in regard to the land and compel him to perform his agreement according to conscience and good faith. * * * And in *Massie* v. *Watts*, 6 Cranch., 148, Chief Justice Marshall delivering the opinion of the court, it is laid down "that in a case of fraud, of trust or of contract, the jurisdiction of a court of chancery is sustainable wherever the person be found, although lands not within the jurisdiction of that court may be affected by the decree." ' To the same effect is the case of *Craft* v. *Indiana, Decatur and Western Railway Co.*, 166 Ill., 580. The court in the case at bar had jurisdiction of the parties by personal service and could enforce its decree *in personam*, and therefore had jurisdiction of the subject matter."

A court has jurisdiction to order the cancellation of a mortgage upon lands situated in another state.

Williams v. *Futzhugh*, 37 N. Y., 444, 449 (1868).

The fact that a receiver is asked for as an auxiliary remedy does not convert the action into a local one. This was held in *Ellis* v. *Reynolds*, 5 Fed. Rep., 394 (1888), a bill for an accounting and the appointment of a receiver. This is also the rule in case of a bill to administer a trust on lands part of which are situated outside the jurisdiction of the court, and a receiver may be appointed for the lands outside of the jurisdiction without converting the action into a local one. *Memphis Savings Bank et al.* v. *Houchins*, 115 Fed. Rep., 96, 108 (1902).

The Supreme Court of New York has power to direct a conveyance of lands situated in a foreign state to its receiver appointed in New York.

Bailey v. *Ryder*, 10 N. Y., 363, 370 (1852).

The English decisions, beginning with the time of Lord Eldon, are perfectly conclusive that the Court of Chancery has power to appoint a receiver of estates situated in foreign jurisdictions. In ..... v. *Lindsey*, 15 Ves. Jr., 91, a receiver was appointed of an estate in the East Indies. In *Hibbert* v. *Hibbert*, 3 Meriv., 681, a receiver was appointed of the real and personal estate of the testator in the West Indies. In *Houlditch* v. *Donegal*, 8 Bligh. N. R., 301, 2 Clark & F., 470, the question of this power of the Court of Chancery was bitterly contested in the House of Lords. The following extract is made from the opinion of the Lord Chancellor in 8 Bligh N. R., 343 (1834):

> "It is said that it is doubtful, if not deniable, that the courts of equity here can appoint a receiver in a foreign country, or a foreign state. The practice of the courts is strong against this doubt, and in favor of the affirmative of the propo-

sition. It is said that these cases passed *sub silentio*, and were not disputed; some of them certainly were disputed; in *Hibbert* v. *Hibbert* it was argued by counsel eminently qualified to deal with such a question, by Sir Arthur Pigott, a West Indian lawyer, as well as a great equity lawyer in this country; he puts his contention, and rests his resistance to the appointment of a receiver, not on the want of jurisdiction, but on another ground. So in the case of ..... v. *Lindsey*, it was suggested that it was every day's practice to grant these receivers. In the case of *Hibbert* v. *Hibbert*, Sir A. Pigott argues upon no such ground as denying the practice of the competency of the jurisdiction; he rests his resistance to the appointment of a receiver upon another ground. If he could have rested it upon the defect of jurisdiction, he would have done so, and Lord Eldon, the judge before whom he argued, would have recognized the practice. There are many other cases where the court has decreed a conveyance and a foreclosure of a mortgage; I mentioned one respecting Norman lands; and there is a case relating to the boundaries of lands in North America.

All these cases show that acting *in personam*, that is, through the medium of its power over the person, the courts of equity in this country mediately, though not immediately, affect the rights of real property abroad."

In this case, while the House of Lords fully vindicate the power of an English Court of Chancery to appoint a receiver of estates in Ireland, as will appear from an inspection of the decree (8 Bligh N. R., 349), the passage quoted from the opinion of the Lord Chancellor shows that such action was taken with a clear conception that the appointment of a receiver was based strictly upon a proceeding *in personam*.

It is to be observed also that so much of the prayer

as relates to the appointment of a receiver is merely ancillary to the principal relief prayed. There is no such thing as an equity to have a receiver appointed by reason of which the complainant is entitled to appeal to the jurisdiction of the court. Whether or not the suit is of a local character is to be determined by the equities of the bill, which plainly indicate it to be a bill for an accounting. These are the marks of a suit *in personam,* and the appointment of a receiver who is simply the custodian of the court, would not have the effect of converting what in its nature is a suit *in personam* into a suit *in rem.* If it were otherwise the entire protection afforded in the courts of the United States to defendants sued out of the district of which they are inhabitants could be swept away at any time by the simple device of adding at the close of the bill a prayer for a receiver. The fallacy of the reasoning which makes the present suit local would be all the more apparent if by chance the railroad of the Belleville Company ran through several states and federal districts. If such an action as the present were in its nature local in that event the complainant might be compelled to bring a local action *in rem* in every state or district instead of being allowed his relief by the simple and obvious remedy of a single suit *in personam.*

So far as the location of the assets of the Belleville and Southern Illinois Railroad Company is concerned, upon the showing made by the bill there is nothing but money, choses in action, books and papers to be put in the possession of the receiver, for the railroad is to remain leased. Under these circumstances, if the suit is local, the proper jurisdiction would be that where

the principal office is situated, where the books and papers are kept, and where the choses in action have their situs.

Indeed the bill shows upon its face that on October 1, 1866, the Belleville Company executed a lease of its railway properties to the Terre Haute Company for a period of 999 years (5) and whether or not the subsequent conveyance of its railway properties by the Belleville Company to the Terre Haute Company on September 10, 1897, was for an adequate consideration, it being alleged that the consideration was inadequate (11), in any event the deed by the Terre Haute Company to the Illinois Company of February 17, 1904 (12, Exhibit D, 46), would be effective to transfer the residue of the leasehold term of 999 years, together with a right of possession thereunder to the Illinois Company. To this deed of February 17, 1904, between the Illinois Company and the Terre Haute Company, the Belleville Company was not a party. In no event would the court be justified from any point of view in cancelling the deed, for it would thereby deprive the Illinois Company of the leasehold term of 999 years which in any event passed by this conveyance. The result of this reasoning is that although the bill indeed prays for a cancellation of everything except the lease between the Belleville Company and the Terre Haute Company and the $15,000,000 mortgage upon the property, executed to the United States Trust Company of New York, it appears on the face of the bill that the court ought not to grant a general cancellation as prayed, and if indeed the allegations of the bill as they stand would make out a right to the cancellation of any of the instruments whose cancella-

tion is sought by the complainant, such a cancellation would be strictly incidental and ancillary to the relief prayed of an accounting under the 999 year lease.

In so far as it is claimed in appellant's brief that under this bill the court could and would enforce an equitable lien upon the property of the defendant, the Illinois Central Railroad Company, an inspection of the bill will disclose that such relief would not be germane to its theory or scope. It appears by Article 19 of the complainant's bill (14) that there is already a trust deed upon the property to secure the issue of $15,000,000 of gold bonds. It is not alleged that the Illinois Central Railroad Company is insolvent or unable to respond to a money decree. The bill may be searched in vain for anything either in the allegations or prayer to justify a claim of equitable lien upon the property of the Illinois Central Railroad Company. No authorities are cited in support of such a proposition.

In order to determine whether the suit is really one "to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought" our only recourse is an inspection of the bill itself, and it is very clear that the bill is one for an accounting according to the terms of a certain lease, and incidentally for the cancellation of certain instruments and the appointment of a general receiver of corporate assets (17, 18). The incidental effect of granting all the relief prayed for in the bill might be to clear the supposed title of the Belleville Company to the railroad which it formerly owned, but this relief, like that

of appointing a receiver, would be ancillary only. As was said by Judge Acheson in the case of *Ellis* v. *Reynolds,* 35 Fed. Rep., 394 (1888):

> "The third prayer of the bill, indeed, is for the appointment of a receiver, but this is an auxiliary remedy, invoked as an aid to the principal relief sought. As the bill now stands, I do not see how the suit can be regarded as a proceeding *in rem,* within the contemplation of the act."

The essence of the bill is that a sufficient rental is not realized from the railroad formerly owned by the Belleville Company (6-7), and that the common stockholders are not getting any dividends and will not get any under present conditions. To the end that the common stockholders may get dividends, the bill prays that every instrument which stands in the way of that laudable end shall be cancelled, and an accounting rendered upon a basis which will make money for the common stockholders. The general cancellation of leases and conveyances is all for the purpose of an accounting at an adequate rental for the use of the railroad formerly belonging to the Belleville Company. Essentially the bill is one for an accounting and nothing else, and the suggestion that it is one to quiet title is an ingenious afterthought.

The third assignment of errors is as follows (78):

> "That it appears from the bill of complaint in this cause, that this is a suit brought to enforce 'an equitable lien upon, or claim to, or to remove an incumbrance or lien or cloud upon the title to real estate' within the Eastern District of Illinois, and comes within Section 8 of the Act of March 3, 1875 (18 Stat. L. 472) entitled 'An act to determine the jurisdiction of Circuit Courts of the United States, and to regulate the removal of

causes from State Courts, and for other purposes.' "

While it is possible that upon the facts alleged in the bill a suit might have been framed in such a way as to be a claim to real estate or to remove an incumbrance or lien upon real estate within the meaning of this statute, the complainant has not elected so to frame his bill. While it is alleged (14) that the railroad formerly of the Belleville Company has been made subject to a trust deed in favor of the United States Trust Company of New York to secure the issue of $15,000,000 of gold bonds, the complainant professes ignorance of the exact terms of this trust deed in spite of the fact that it is found in the same records as the other instruments which he has made exhibits in his bill. No offer is made to redeem from this mortgage and no relief is sought against the United States Trust Company of New York (18), nor has that defendant been served. The bill then is not one to remove an incumbrance or lien upon the title to real estate, nor is it a bill to remove a cloud upon the title to real estate. In order to file a bill to remove a cloud from title the complainant must be in possession of the premises.

Frost v. *Spitley,* 121 U. S., 552, 556 (1887).
Florida v. *Furman,* 180 U. S., 402, 428 (1901).

On the contrary, the bill shows that the railroad formerly of the Belleville Company is in the possession of the Illinois Company (8) and an inspection of the prayer (18) will show that it does not ask that the possession of the railroad be restored to the Belleville Company or to cancel the lease of October 1, 1866, by

which the railroad formerly of the Belleville Company was leased to the Terre Haute Company for a period of 999 years (5, 18). The bill, therefore, is not one to enforce a claim to real estate, nor is it one to enforce an equitable lien upon real estate. While the bill prays for an accounting upon the basis that the lease of the Belleville Company to the Terre Haute Company of October 1, 1866 is still in force (18), it also prays that the Belleville Company be ordered to return and deliver up and account for whatever considerations it may have received under the various deeds and leases since that time (18). Indeed the idea that the bill is one to enforce an equitable lien will appear so preposterous upon reading the bill that it is impossible to argue the matter seriously.

While it is perhaps too much to say that all the decisions upon the subject, especially in the lower Federal Courts, are reconcilable, an inspection of the cases which are cited by the complainant will, it is believed, disclose in every case that the bill as actually framed and upon the facts shown was really one to enforce "an equitable lien upon, or claim to, or to remove an incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought" instead of being, like the present suit, essentially one *in personam*.

The Authorities Cited by the Appellant.

Taking up the cases cited by complainant, that of *Jellenik* v. *Huron Copper Mining Co.*, 177 U. S., 1, 10 (1900) was a bill to remove a cloud upon the title of certain shares of stock, and was held properly brought

in the state in which the corporation was organized, and the district where its principal office was situated.

Goodman v. *Niblack*, 102 U. S., 556, 563 (1880) was a proceeding to enforce a lien upon a fund within the jurisdiction of the court.

McBurney v. *Carson*, 99 U. S., 567, 570 (1878), was a mortgage foreclosure.

The case of *Mellen* v. *Moline Malleable Iron Works*, 131 U. S., 352 (1889), held that a bill to foreclose a trust deed and chattel mortgage and a cross-bill to set those instruments aside and subject the property to the payment of creditors fell within Section 8 of the Act of March 3, 1875. It is very obvious that the proceeding was one to enforce a legal or equitable lien, a claim to certain real and personal property situated in the District on the one hand, and a proceeding to remove the lien and enforce another legal claim upon the same property on the other. As was said by Mr. Justice Harlan at page 366:

> "The trust deed and chattel mortgage executed by the Iron Works created a lien upon the property in favor of Wheeler, Carson, Hill, and the Keator Lumber Company, superior to all other creditors. The Furnace Company, in behalf of itself and other unsecured creditors, as well as Wheelock, denied the validity of Hill's lien as against them. That lien was therefore an incumbrance or cloud upon the title, to their prejudice."

Greeley v. *Lowe*, 155 U. S., 58 (1894), was a bill for the partition of real estate of which the plaintiff was in possession, praying in the alternative for a sale of the lands (page 60). As said by Mr. Justice Brown, at page 74:

> "The bill in question is one for the partition of land, wherein plaintiff avers that he is seized as tenant in common of an estate in fee simple, and is in actual possession of the land described, and after setting forth the interests of the other tenants in common, and alleging that no remedy at law exists to enable him to obtain his share of said lands in kind, or of the proceeds if sold, and that he is wholly without remedy except in chancery, prays for the partition of the land, and the segregation of his own share from that of the others, and incidentally that certain deeds may be construed, and, if invalid, may be cancelled, and that he may recover his advances for taxes and expenses. This is clearly a bill to enforce a claim and settle the title to real estate."

Taking up the cases cited by the complainant in the lower Federal Courts in chronological order, *Castello* v. *Castello,* 14 Fed. Rep., 207 (1882), was a bill to remove a cloud from the title of a widow to her lawful share of her husband's estate on account of an instrument she had been fraudulently induced to sign. As said by District Judge Krekel at page 209:

> "Looking at the object of the bill it mainly seeks to remove a lien or cloud upon her interest in the estate and property of her husband."

East Tennessee, V. & G. R. Co. v. *Atlanta & F. R. Co.,* 49 Fed. Rep., 608 (1892), was a bill based upon a section of the Georgia Code, to seize certain property and sell it. This is clearly of a local character. It was said by District Judge Spear (616-617):

> "It is insisted, however, by the learned counsel for the plaintiff that this is not a suit of a local nature, within the meaning of the act of congress. To this proposition the court cannot assent. We are controlled by the averments of the bill. It alleges that the defendant corpo-

ration is insolvent; that the plaintiffs are creditors; that the only means by which they can obtain payment of their debts is by the seizure of the railroad itself,—the *res*,—which is the subject-matter of this litigation. This railroad is mainly real estate, and is an entirety. A large part of it is actually located within this district. In so far as the assets are personal, they are likewise largely located here. It is therefore a suit of a local nature, and the fact that a portion of this entirety is in the northern district of Georgia does not affect the local character of the suit. The statute of the state code (section 3149a) gives to the plaintiffs an equitable right to subject this property to the payment of their debts, which right, it has been repeatedly held, a court of equity of the United States can enforce. To do this, it is necessary for a receiver of the court to take actual possession of the *res*, to control and administer it, and to do this in the locality in which it is situated. The character of the suit is not doubtful."

Upon the point that a railroad corporation is a resident of the entire state and an inhabitant of all the counties through which the road runs, this case was subsequently overruled by the Supreme Court of the United States, as will appear under another heading.

McGee et al. v. *Marietta & N. G. R. R. Co.*, 48 Fed. Rep., 243 (1891), was a bill to enforce liens arising in the construction of a railroad, by sale of the railroad and a distribution of the proceeds.

Single v. *Scott Paper Mfg. Co.*, 55 Fed. Rep., 553 (1893), was a suit for the specific performance of a contract for the conveyance of land by the plaintiff who was in possession of the land and had made valuable improvements, and the court in determining

whether or not the suit was one to enforce an equitable claim to real estate took into consideration certain statutes of Ohio by virtue of which the judgment of the court would have the effect of a conveyance of the property (p. 557).

Evans v. *Charles Scribner's Sons,* 58 Fed. Rep., 303 (1893), was a suit to procure the cancellation of a deed on the ground of fraud. So far as appears, the plaintiff may have been in possession of the property and the decision of District Judge Newman may have been based upon the idea of a bill to remove a cloud upon title. The report is meagre.

Cowell v. *City Water Supply Co.,* 96 Fed. Rep., 769, 770 (1899), was a bill to set aside a foreclosure and judicial sale, cancelling the mortgages upon which it was based, and establishing the plaintiff as the owner of an undivided interest in the mortgaged property. Manifestly this suit was properly brought in the court which had foreclosed the mortgage and it was to enforce a claim to the property itself.

McLaughlin v. *McCrory,* 55 Ark., 442 (1892), was a suit to cancel a fraudulent deed, and revest title in the complainant, and relies upon the Arkansas Statute authorizing the passing of title by decree of the court without any act to be done on the part of the defendant.

Adams v. *Cowles,* 95 Mo., 501 (1888), was in relation to a bill to remove a cloud upon title.

Acker v. *Leland,* 96 N. Y., 383, 386 (1884), was a suit to set aside a fraudulent assignment, for a sale of the assigned property, and a payment of the plaintiff's claim out of the proceeds thereof.

Chapin v. *Doods,* 104 Mich., 232 (1895), was a suit by an assignee of an insolvent debtor to set aside fraudulent conveyances of land. It must be borne in mind that the purpose of the proceeding was to acquire property and distribute it among creditors.

McKenzie v. *Bacon,* 38 La. Ann., 764, 765 (1886), was an action for the possession of real property.

Markham v. *Powers,* 9 S. W., 255 (Ky., 1888), was a bill to sell, in satisfaction of a judgment, land fraudulently conveyed.

Quarl v. *Abbett,* 102 Ind., 233, 234 (1885), was a case of the attachment of shares of stock of a non-resident, which were alleged to have been fraudulently transferred.

Lane v. *Innes,* 43 Minn., 137, 139 (1890), was a suit by an assignee to set aside a fraudulent conveyance by a bankrupt, in order that the proceeds might be applied to the satisfaction of creditors.

It is conceived that none of these cases are authorities against the position of the appellees.

No General Appearance Was Entered.

The fourth assignment of errors is as follows (78):

"That by demanding the right to argue, and by arguing the merits of the bill of complaint on the 11th day of December, 1905, in open court, and by arguing at said place and time that the court should dismiss said bill of complaint on the merits, the solicitor representing the defendants" the Illinois Company, the Belleville Company and the Terre Haute Company, "thereby entered a general appearance on behalf of said defendants, and

thereby waived the right of said defendants to be sued only in the Northern District of Illinois, if any such right exists."

Just what took place on this occasion is shown by the record on page 60, in the order of December 28, 1905, from which the following quotation is made:

> "The court finds that at the argument of the pleas to the jurisdiction set down for argument and heard on the 11th day of December, 1905, the defendants by their counsel contended that the question of the sufficiency of the bill was in issue the same as if a demurrer to a plea had been filed. The complainant objected to any argument of the merits of the bill and contended that sufficiency of the bill was not in issue. The court suggested a doubt whether the sufficiency of the bill was in issue, but permitted the defendants' counsel to argue the question of the sufficiency of the bill in order that such argument might be considered in case the court should conclude that the sufficiency of the bill was involved in the disposition of the pleas. Thereupon the defendants' counsel argued that the court ought to dismiss the bill for want of equity, but no motion to that effect was made by defendants."

The authority relied upon at the argument of the pleas was the following:

> "The sufficiency of the bill as to substance is also tested when the plea is set down for argument; but it has been said that the allegations therein are not taken as strictly against the complainant as in case of a demurrer."
>
> Foster's Fed. Prac., 3d Ed., Vol. 1, Sec. 140, p. 331.

To the same effect is the following:

> "[By setting down a plea for argument] the sufficiency of the bill as to substance is tested, al-

though its allegations are not taken as strictly against the complainant as in case of demurrer."

Beach Mod. Eq. Pr., Paragraph 326 (1894), both citing *Rumbold* v. *Forteath*, 2 Jur. (N. S.), 686, which will be found to support the text.

The following citation is added:

"Upon a familiar principle of pleading, the demurrer to the plea presents the question of the sufficiency of the bill, as well as of the plea itself. Is the bill sustainable on the facts as admitted by the pleadings? If this question is answered in the negative, it is clear that the demurrer to the plea must be overruled."

Beard v. *Bowler*, 2 Fed. Cas., 1171, Case No. 1180; 2 Bond, 13 (1866).

The court had a doubt as to whether or not the merits of the bill ought to be considered, but permitted argument in order to consider it in case the court found the merits of the bill were open to examination in the state of the pleadings. Since no motion was made to dismiss the bill, and argument on the merits of the bill was made for the purpose of being considered only in the event the court should think that the merits of the bill were open to examination, and such argument was received by the court only for the purpose indicated, the contention that the defendants' solicitor thereby entered a general appearance does not seem to merit very serious discussion. The defendants never appeared in court as moving parties and their solicitor in his argument addressed himself only to the issues which appeared to be open upon the state of the pleadings, and his argument of the merits of

the bill was made only for the purpose that the court should consider it in case the court should be of the opinion that it was the court's duty to rule upon the merits of the bill.

The filing by the defendant in a state court of a petition to remove the cause to the proper Circuit Court of the United States is not a general appearance, although the defendant may not in his petition have restricted the purpose of his appearance in the state court.

Wabash Western Ry. v. *Brow,* 164 U. S., 271 (1896).

In *Thomson* v. *McMorran Milling Co.,* 132 Mich., 591, 94 N. W., 188, 191 (1903), the defendant filed a special appearance moving to quash service and to strike out a suggestion of damages in an action of ejectment, upon the ground that service had not been made upon the agent of the defendant, and also that the court had lost jurisdiction of such a suggestion. It was claimed that this constituted a general appearance. The court held that service was not made upon the proper agent, and disposed of the question of general appearance as follows:

> "We are not convinced that the other point is well taken, but think that it should not be passed upon on this record. It is urged that by raising that question the defendant waived the question arising over the service. It is clear that such was not the intent of defendant's counsel, and, if it be true that the court had jurisdiction over the subject-matter, the motion to strike the suggestion should not be treated as equivalent to an appearance."

It must be manifest to the court from an inspection

of the bill and briefs that it is impossible to determine whether or not the suit is in its nature a local one without a detailed consideration of the nature of the bill and the equities upon which it bases itself. In order to deal with the plea to the jurisdiction it is indispensable that the court should consider at least for that purpose the equities of the bill. It would be proper to point out that complainant is not in possession, therefore the bill cannot be considered a bill to remove a cloud upon title; that the complainant does not set up any legal or equitable lien, therefore the bill is not for a foreclosure; that the bill does not claim possession of the railroad; that the bill is not to remove any incumbrance or lien upon the title, no offer of redemption being made, and the like. Counsel had the right in order to determine the nature of the suit to take up the various theories as to the nature of the bill upon which it was likely the jurisdiction of the court might be based, and to show, if they could, that the bill was not based upon the equity claimed, and if it should turn out that none of the theories upon which the complainant attempted to explain his bill could be supported, why so much the worse for the bill. If the court was in doubt whether or not, upon the state of the pleadings, he ought to consider the merits of the bill, and desired to hear argument upon the merits of the bill to be considered by him only in the event that he should conclude that he ought to rule thereon, it would not be fair to penalize the defendants for addressing themselves in their argument to all those questions which might in the opinion of the court be proper for consideration in the state of the pleadings. In deciding what constitutes a general appearance, the

principles of intention and of fair play ought to be followed, and a person ought not to be considered to have entered a general appearance where evidently he did not intend to do so and where considerations of fair play do not require that he should be treated as if he had entered a general appearance whether he intended to do so or not. In the present case, fair play works in favor of the defendants and not against them, and to hold that by what took place they have entered a general appearance would be simply to catch them in a trap.

Certainly an expression by the court below in its order ruling upon the question of jurisdiction that the bill was in fact without equity cannot prejudice the defendants, the ruling having been confined to the point of jurisdiction and having indeed been subsequently set aside upon the application of the complainant to be allowed to take issue upon the pleas to the jurisdiction.

The Defendants' Place of Inhabitance.

The privilege set up by the defendants is that of Section 1 of the Act of August 13, 1888, Ch. 866 (25 Stat. L., 434), in which referring to the Circuit and District Courts of the United States, it is provided:

> "No civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

In the appellant's assignment of errors no error is assigned for sustaining the plea to the jurisdiction, based upon the provision just quoted, of the Illinois Company, but error is assigned upon the overruling of the pleas of the Belleville and Terre Haute Companies. The evidence is undisputed that the last stockholders' and directors' meetings of each of these companies were held in Chicago in the Northern Division of the Northern District of Illinois; that the by-laws of each of these companies provide that the annual meetingsof stockholders shall be held there, and that the books of the company are kept in Chicago (64, 65, 72), while as conceded in the bill the Illinois Company is in possession of and operating the railroads formerly owned by the Belleville and Terre Haute Companies by virtue of the leases and subsequent conveyances in fee, set out in the bill. Under these circumstances, the authority of the case of *Galveston H. & S. A. R. Co.* v. *Gonzales,* 151 U. S., 496 (1894), is controlling. This case overruled a number of cases in the lower Federal Courts, including *Guinn* v. *Iowa Central Ry. Co.,* 14 Fed. Rep., 323 (1882), cited by the appellant.

In *Galveston, H. & S. A. R. Co.* v. *Gonzales,* 151 U. S., 496 (1894), a suit brought by a Mexican against the railway company in the United States Circuit Court for the Western District of Texas where it had a railroad and offices, the defendant appeared specially and pleaded in abatement that its principal office, habitat and domicile were in the Eastern District of Texas. The court held that there was a distinction between being a citizen of the state and an inhabitant of the district.

The court said (page 504):

> "In the case of a corporation the question of inhabitancy must be determined, not by the residence of any particular officer, but by the principal offices of the corporation, where its books are kept and its *corporate* business is transacted. even though it may transact its most important business in another place. It is but a corollary of the proposition laid down in the three cases above referred to, that if the corporation be created by the laws of a state in which there are two judicial districts, it should be considered an inhabitant of that district in which its general offices are situated, and in which its general business, as distinguished from its local business, is done."

It was held that the plea should have been sustained.

In the case of *United States* v. *Southern Pacific R. Co., et al.*, 63 Fed. Rep., 481 (1894), the court said:

> "It is the established law that a corporation organized in one of the United States, and in that state only, cannot be considered a citizen, an inhabitant, or a resident of any other state, and that a corporation created by a state in which there are two or more judicial districts is to be considered an inhabitant of that district in which its general offices are situated, and in which its general business, as distinguished from its local business, is transacted." (page 482.)

In the case of *A. L. Wolff & Co.* v. *Choctaw, O. & G. R. Co., et al.*, 133 Fed. Rep., 601 (1894), citizens of Missouri, in the United States Circuit Court for the Eastern District of Arkansas, sued a corporation chartered by Congress and having its principal office in Indian Territory, and an Illinois corporation. Both of the defendants did business in the state and district where the suit arose. Demurrers objecting to the juris-

diction by the defendants were sustained and the cause dismissed. The court relied upon the case of *Galveston, etc., Railway Co.* v. *Gonzales,* 151 U. S., 496. The second and third head notes (by the court) are as follows:

> 2. "An action against a corporation created by an act of Congress is one arising under the laws of the United States, and under the Act of March 3, 1887, c. 373, 24 Stat., 552 (U. S. Comp. St., 1901, p. 508), can only be maintained in a federal court of the district of which it is an inhabitant (*i. e.,* has its principal offices and transacts its corporate business), regardless of the residence of the plaintiff."
>
> 3. "A corporation is an inhabitant of the state and district in which its principal offices are, and its corporate business is transacted. The fact that it is doing business in a state or district other than that in which it has its residence, although it has, in compliance with the laws of such other state, consented to be sued in its courts, and for that purpose appointed an agent upon whom legal process may be served, does not make it an inhabitant of such other state or district, within the meaning of the act of March 3, 1887, c. 373, 24 Stat., 552 (U. S. Comp. St., 1901, p. 508)."

It is suggested that in changing the place of business of the Belleville Company, there has been a failure to comply with the Illinois Act of March 26, 1873, as amended by the act approved June 6, 1889, to be found in Hurd's Revised Statutes of Illinois, 1905, Ch. 32, sections 50, *et seq.,* beginning at page 507, which provides:

> "That whenever the board of directors, managers or trustees of any corporation existing by virtue of any general or special law of this state, or any corporation hereafter organized by virtue of any law of this state, may desire to change the

> name, to change the place of business, to enlarge or change the object for which such corporation was formed, to increase or decrease the capital stock, to change the number of shares of capital stock, to increase and decrease the par value of shares of capital stock, to increase or decrease the number of directors, managers, or trustees, or to consolidate said corporation with any other corporations now existing or which may hereafter be organized, they may call a special meeting of the stockholders of such corporation;" etc.,

making provision for a special notice to stockholders by mail and by publication, requiring a two-thirds vote of all the stock of the corporation and the filing of a certificate showing the change in the office of the secretary of state, and also publication in a newspaper of a notice of such changes of organization. As pointed out by the court below, at the argument of the plea, the question whether or not the defendant has complied with the law in changing its principal place of business is one between it and the state only, and if in fact the principal office and the only office of the defendant in question is in Chicago, the court cannot inquire, upon the issue raised by the plea, as to whether or not the proper formalities were complied with in order to locate the office there. If the defendant has acted unlawfully it is answerable to the state for its unlawful action but not to this complainant, and the legality of the change of office is not subject to be attacked collaterally by one of its stockholders upon an issue as to the actual inhabitancy of the defendant.

> "A most important doctrine connected with this subject, and one which rises above the mere principle of estoppel, is that whether a corporation has acted without authority conferred on it by the legislature or has acted in contravention to an act

of the legislature, cannot be set up collaterally by individuals who deal with it, or by third persons, but can be set up only by the state, in a direct proceeding to forfeit its charter, to oust it of some particular franchise, or to subject it to punishment; or where the question is otherwise litigated between the state and the corporation."

Seymour D. Thompson, in 10 Cyc., 1164 (1904).

It will probably be sufficient for the present purpose simply to cite some of the cases.

National Bank v. *Mathews*, 98 U. S., 621, 629 (1878).

Fritts v. *Palmer*, 132 U. S., 282, 289 (1889).

Seymour v. *Slide & Spur Gold Mints*, 153 U. S., 523, 525 (1894).

Blair v. *Chicago*, 201 U. S., 400, 450 (1906).

Baker v. *Administrator of Backus*, 32 Ill., 79, 110 (1863).

The People v. *North Chicago Ry. Co.*, 88 Ill., 537, 544 (1878).

Bushnell v. *Consolidated Ice Machine Co.*, 138 Ill., 67, 74 (1891).

Coquard v. *National Linseed Oil Co.*, 171 Ill., 480, 484 (1898).

Lincoln Park Chapter, etc. v. *Swateck*, 204 Ill., 228, 232 (1903).

It is also to be said that the record does not contain the charter of the defendant railroad company and so far as appears in the record there is nothing unlawful in its having its principal office in Chicago. While the present laws of Illinois provide that the charters shall show "the place at which shall be established and

maintained the principal business office" of the proposed corporation (Hurd's Rev. Stat. Ill., 1905, Ch. 114, Sec. 3, p. 1565) this has not always been the case and the defendant is acting under a special charter and is not incorporated under the general law. Even assuming that the court has the right to inquire as to whether or not the machinery of the statute was set in motion when the office of the Belleville Company was located in Chicago, there is nothing in the record to show that the principal office was ever lawfully established anywhere else. The record is silent as to whether or not the offices of the Terre Haute Company have ever been anywhere else. (71-72.)

The Belleville Company was incorporated by a special Act of February 14, 1857. (Private Laws of Illinois, 1857, p. 707.) This act was passed before the general law of Illinois for the incorporation of railroad companies went into effect, and the charter does not locate the principal place of business of the company, which may as lawfully be in Chicago as anywhere else in Illinois. The charter is too long to be printed here. The first section is probably the only one which could be claimed to have any bearing on the matter, and is reproduced as follows.

> "Be it enacted by the people of the State of Illinois, represented in the General Assembly, That J. J. Swanwick, H. S. Ozburn, David S. Phillips, John Baird, J. M. Sullivan, W. W. Roman, J. L. Mann and C. A. Keyes, of Perry County; J. L. D. Morrison and P. B. Fouke, of St. Clair County, in this State, and L. W. Ashley and Sidney Breese and their associates in and successors and assigns, are hereby created a body corporate and politic, under and by the name and style of 'The Belleville and Southern Illinois Railroad

Company,' with perpetual succession; and by that name shall be and are hereby made capable, in law and equity, to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity in this State or elsewhere; to make, have and use a common seal, and the same to renew and alter at pleasure; and shall be and are hereby vested with all the powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of this act. And the said company are hereby authorized and empowered to locate, construct and finally complete and put in operation a railroad, from the City of Belleville, in St. Clair County, southwardly, by way of the Village of Pinckneyville, to some point on the Illinois Central railroad, in Perry County, deemed by the said company the most eligible; and for that purpose the company are authorized and empowered, upon the most eligible route, to lay out their railroad, for a single or a double track, to any width, not exceeding one hundred feet, through the whole length; and for the purpose of constructing embankments, may take as much land as may be necessary for the proper construction and security of said railroad."

The obvious intent of the Illinois act above quoted in regard to changing the place of business of a corporation is to provide for the relief of corporations whose charters have located their place of business. The context of the act shows that its whole intent is to change corporate powers and free corporations from charter restrictions. Provision is made, not only for changing the place of business, but for the change of name, object, increasing or decreasing the capital stock, or the number of directors, consolidation of the corporation with other corporations, and the like, all of these things being manifestly a change of corporate powers.

Such an act cannot properly be construed to be intended to affect corporations like the Belleville Company organized under a special act which does not establish their place of business or place any limitations upon the location of their principal offices. The Belleville Company still preserves the freedom of its original charter and may still establish its principal office at any place it sees fit within the State of Illinois without violating its charter and therefore without being required to avail itself of the enabling act allowing the change of place of business, of which railroad corporations incorporated more recently and under the general law of the state are required to avail themselves.

Upon the point that the Belleville & Southern Illinois Railroad Company has not complied with Chap. 32, Sec. 50 of Hurd's Rev. Stat. Ill. (appellant's brief, p. 45) in regard to changing its place of business, it is also to be observed the words "change of place of business" do not necessarily refer to the change of the principal office of the corporation. If, for example, a mining corporation had its mines in Southern Illinois and its principle office in Chicago, a change of place of business might very well mean a change of the place where its mining operations are carried on as distinguished from the place where the corporate meetings are held and the general corporate business transacted. This interpretation would be borne out by the proviso of Section 50:

> "No corporation shall by virtue hereof, change its place of business from any town, county or municipality where such town, county or municipality, or any of the inhabitants thereof, or any

> person or persons interested therein, shall have donated or in any manner contributed any money or other valuable thing to induce such corporation to locate in such town, county or municipality."

This evidently refers to the location of such a thing as a railroad, a factory or other industry, for it can hardly be supposed that the purpose of the proviso would be carried out if the corporation retained its place of corporate meetings and general business in the town which made the donation and might yet move off its railroad, factory or other plant to another town.

It is especially to be observed, however, that the Belleville & Southern Illinois Railroad Company, being incorporated under a special charter, the general legislation of the state in regard to corporations is not to be construed as applying to it.

In *Wincock* v. *Turpin*, 96 Ill., 135, 144 (1880), in reference to a proceeding to wind up a corporation, the court said:

> "This was intended to be a proceeding under the General Incorporation Law. The 25th section of that act provides, that when certain contingencies arise, suits in chancery may be brought by joining the corporation in the suit against all of the stockholders, and each stockholder may be required to pay his *pro rata* share of the debts against the corporation to the extent of the unpaid portion after exhausting the assets of such corporation, etc. But that section only applies to corporations organized under that chapter. It does not apply to or embrace bodies created by special charter. Nor does it in terms embrace liabilities of the character of the claims in this case. Hence that section can have no kind of application to this case.
>
> "If complainant was misled by the case of *Coates*

> v. *Cunningham,* we will say that we decided that case under a misapprehension of the facts. It was supposed that corporation had been organized under a general law, and the proceedings was for unpaid stock. But on inspecting the transcript we find it was created by a special charter. That case is overruled."

Also, in *Union Mutual Life Ins. Co.* v. *Frear Stone Mfg. Co.,* 97 Ill., 537, 545 (1888), in a suit to attempt to enforce stockholders' liability, the court said:

> "The charter of the defendant corporation was granted to it by the General Assembly before the adoption of the present constitution, and, consequently, long before the passage of the general incorporation act, and is not, therefore, affected either by the constitution or the general law on the subject of corporations."

In regard to the position taken by appellant that it is legally impossible for a railroad company to locate its residence at a place which is not on its authorized line of road, no authority is cited for this somewhat unusual proposition, and it is certainly contrary to the very general practice of railroad companies. For example, the Southern Pacific Railway Company is incorporated under the laws of Kentucky and does not own a mile of railroad track in that state. Near the City of Chicago are a number of Belt Lines which at different distances form a circumference of which the City of Chicago is, roughly speaking, the center. These corporations have their principal offices in Chicago and it would certainly be very inconvenient to require them to have their offices anywhere else. Indeed the greater the radius of the circle the more convenient becomes the central location, when it is considered how large a part of the business of a railroad company

must be conducted by mail and telegraph. The principal offices of railroad companies will very probably continue to be located at the place of greatest convenience within the state under whose laws the corporation is organized. To require the principal office of a railroad company always to be located upon its line of railroad would frequently produce the greatest inconvenience without any corresponding public benefit.

THE CONSTRUCTION OF THE ACT OF MARCH 3, 1905 (33 STAT. L., 992) CREATING THE EASTERN DISTRICT OF ILLINOIS.

In regard to the fourth subdivision of appellant's brief (page 50) "That by Sections 14 and 10 of the Act of Congress approved March 3, 1905, creating the Eastern District of Illinois, the Circuit Court of said District was given jurisdiction of all causes in which the defendant is found within the District," the attention of the court is called to the fact that the assignment of errors does not cover this point (Printed Record, 78.) The right to an assignment of errors is statutory. (Rev. Stat., Sec. 997; 1 U. S. Comp. Sta., 1901, p. 712.) It is provided by Rule 21, Section 4, that "when there is no assignment of errors, as required by Sec. 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified."

> "The assignment of errors, being, as thus seen, essential to the allowance of an appeal or the granting of a writ of error, becomes an import-

ant part of the record, and it is one of the things upon which the trial court acts in granting the writ or allowing the appeal. It is plain, therefore, that such assignment constitutes an essential part of the record to be presented to this court, and it cannot be superseded by a subsequent assignment of errors,—certainly not by one filed without leave of the court."

Lloyd v. *Chapman,* 93 Fed. Rep., 599, 600, C. C. A., 9th Cir., 1899.

"The complaint made on behalf of some of the appellants on account of the computation of interest upon the claims of the creditors was not made the subject of an assignment of error, and is therefore not considered."

George v. *Wallace,* 135 Fed. Rep., 286; 68 C. C. A., 40, 49 (8th Circuit, 1904).

Without intending to waive the position that error has not been assigned upon this point, appellee makes the following argument to be considered only in case the court shall hold that the point is open for consideration and is covered by the assignment of errors.

The case of *Petri* v. *Creelman Lumber Co.,* 199 U. S., 487 (1905) turns upon the fact that the defendants resided in different districts of the state, while in the case at bar each of the defendants served has pleaded residence in the Northern Division of the Northern District of Illinois. Under the provision of the Act of March 3, 1905, establishing the Eastern District of Illinois (33 Stat. L., 992) it is provided by the 14th Section that the courts and judges of the Eastern District of Illinois shall possess the same jurisdiction and powers, civil, criminal, equitable, or otherwise, and perform the same duties as are performed by the Circuit

and District Courts and judges of the United States of the Southern District of Illinois, it being provided in the second paragraph of Section 10, that "When the defendant is a non-resident of the district, action may be brought in either division of said district wherein the defendant may be found." It, therefore, follows, argues the appellant, that the provision just quoted applies also to the Eastern District.

It is to be observed, however, that by Section 10 of this act the Southern District of Illinois is divided into two Divisions while by Section 12 of the act the Eastern District of Illinois is not divided. The provision that when the defendant is a non-resident of the district, action may be brought in either Division of the district is significantly omitted in the establishment of the Eastern District, and obviously has no application to a district which is not divided.

Assuming, however, that the passage quoted is applicable to the Eastern District, it is suggested that this passage refers to suits which the plaintiff has already a right to bring against the defendant, for example, those of a local nature, and to cases where the defendants reside in different districts of the state, and is simply intended to relieve the embarrassment of the queston in which Division to sue. It is undesirable by interpretation to multiply exceptions to the general laws of the United States in relation to venue, and a departure from the general plan should not be inferred except from plain and clear language.

It is stated by appellant in his brief, page 52:

> "In the present case all three defendants, railroad companies, were found and served, in the Eastern District of Illinois," &c.

So far as the Illinois Central Railroad Company, no question is raised that if it was to be sued alone, suit should be brought in the district where its principal office is situated, in the Northern Division of the Northern District of Illinois. No effort is made in the record to show that it was suable elsewhere. As to that company cross-examination was waived. (74.) In case of Belleville and Terre Haute companies, the marshal's return (53) is that he delivered a copy of the subpoena to W. K. Murphy, as director of the said companies, at Pinckneyville, Illinois. It appears from the record that the two defendants have no offices, except at Chicago, and are not transacting business anywhere else. Under these circumstances the mere serving of a director at Pinckneyville would not cause the corporations to be "found" in the district in which Pinckneyville is situated.

Goldey v. *Morning News,* 156 U. S., 518, 522 (1895, service on president).

Conley v. *Mathieson Alkali Works,* 190 U. S., 406, 411 (1903, service on director).

Caledonian Coal Co. v. *Baker,* 196 U. S., 432, 444 (1904, service on president).

Reilly v. *Philadelphia & R. Ry. Co.,* 109 Fed. Rep., 349, 350 (1901, service on director).

Eldred v. *American Palace Car Co. of N. J.,* 103 Fed. Rep., 209, 210 (1900, service on director).

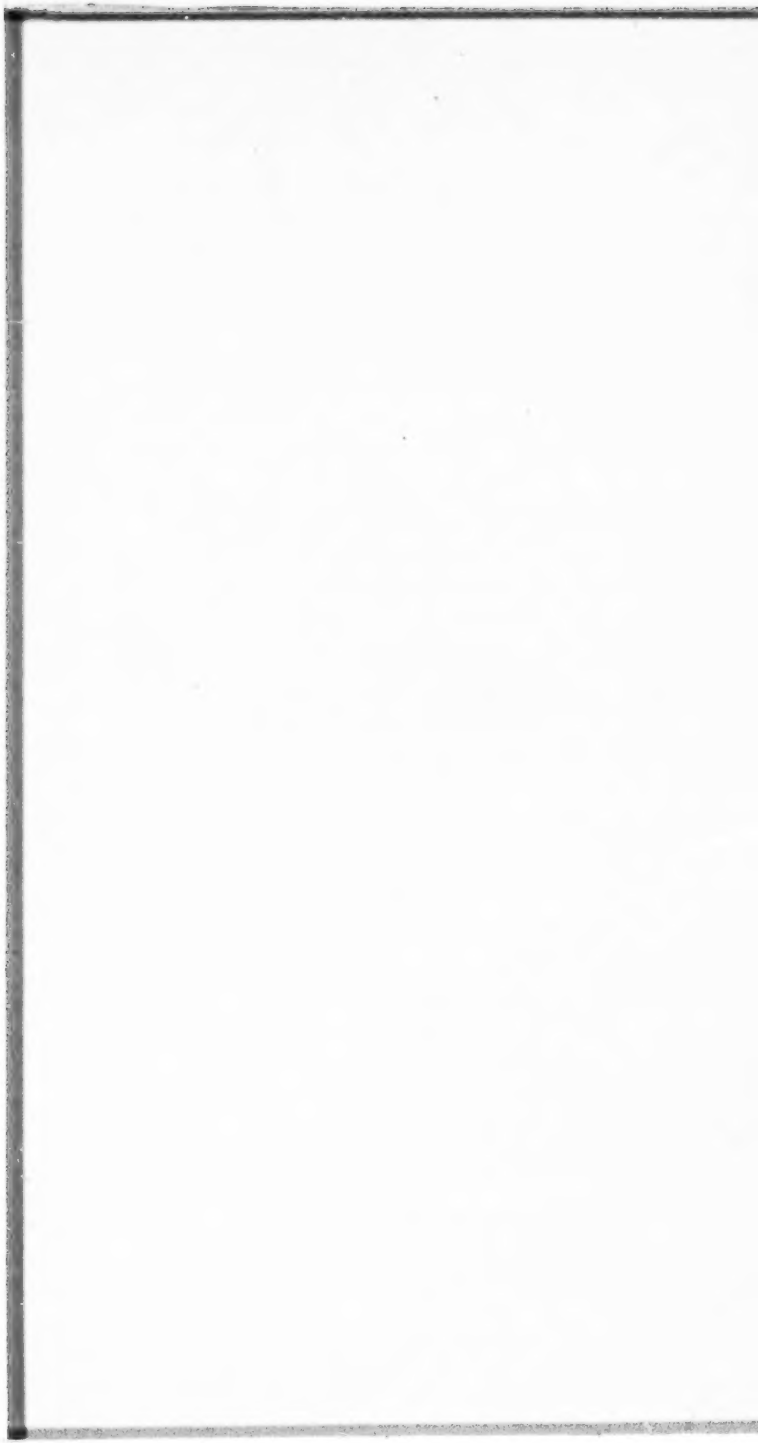
Same case on Appeal, 105 Fed. Reptr., 457 (C. C. A., 3rd Cir., 1900).

Respectfully submitted,

J. M. Dickinson,

Blewett Lee,

Counsel.



Supreme Court of the United States.

No. 238.—October Term, 1906.

Citizens' Savings and Trust Company, Appellant, vs. Illinois Central Railroad Company, Belleville and Southern Illinois Railroad Company, and St. Louis, Alton and Terre Haute Railroad Company.	Appeal from the Circuit Court of the United States for the Eastern District of Illinois.

[March 4th 1907.]

Mr. Justice Harlan delivered the opinion of the Court.

This suit in equity was brought in the Circuit Court of the United States for the Eastern District of Illinois against the Illinois Central Railroad Company, the Belleville and Southern Illinois Railroad Company, the St. Louis, Alton and Terre Haute Railroad Company, all Illinois corporations, (to be hereafter called, respectively, the Illinois, the Belleville, and Terre Haute companies,) and the United States Trust Company, a New York corporation. The last named corporation was never served with process and did not appear in the suit. The case presents a question as to the jurisdiction of the court below.

The plaintiff, an Ohio corporation, is the holder of four hundred shares of the common stock of the Belleville Company, and sues as well in its own as on the behalf of all other stockholders of that company or beneficiaries, who may chose to come in and bear their proportion of the cost and expenses of the proceedings. Assuming the allegations of the bill to be true, the suit is not a collusive one, and could be properly brought by a stockholder of the Belleville Company, making that company a defendant.

The bill refers to various instruments, deeds and leases, as follows: A deed of October 1st 1895, between the Terre Haute Company, the Illinois Company and the Belleville Company, whereby the railroad and properties of the Belleville Company, then held by the Terre Haute under a lease executed in 1866, were transferred to the Illinois Company for a period of ninety-nine years; a deed of September 10th 1897, to which the Belleville and Terre Haute Companies were parties and which purported to transfer the title to all the railroad properties of the former to the latter company; a lease of September 15th 1897, by the Terre Haute Company to the Illinois Central Railroad Company, confirming the above

lease of October 1st 1895, and covering, among other properties, the Belleville railroad, extending from Belleville, in St. Clair County, Illinois, to Duquoin, Perry County, in the same State; and a deed of February 17th 1904, between the Terre Haute Company and the Illinois Company, purporting to convey to the latter company all the railroad properties, corporate rights and franchises of the former company.

The plaintiff prayed that these leases and deeds, so far as they affect or purport to affect the properties, franchises, rights or liabilities of the Belleville Company be cancelled and declared void, and that that company be required to return and account for whatever consideration it may have received under such leases and deeds to the party or parties from whom the consideration may have moved.

The bill charges, in substance, that said deeds were illegally and fraudulently procured by the Illinois Central Railroad Company, and by means of those instruments, and by various improper schemes, [redacted] acquired not only complete control over and possession of the Belleville Company, and all its properties but has managed, and [redacted] continuing to manage, those properties, in its own interest and in total disregard of the rights of holders of the common stock of the Belleville Company. Indeed, it is charged that what the Illinois Central Railroad Company has done, is doing, (and, unless restrained, will continue to do,) has practically destroyed the value of such stock.

The plaintiffs also prayed for a decree ordering the defendant, the Illinois Central Railroad Company, to account for and pay over to the Belleville Company, or to a receiver to be appointed for that company, such proportion of the yearly gross earnings as the Belleville Company is entitled to under the lease executed by and between the Belleville Company and the Terre Haute Railroad Company, bearing date October 1st 1866; such accounting to cover each fiscal year, or part thereof, from the time when the Illinois Central Railroad Company first acquired the railroad properties of The Belleville Company as lessee or sub-lessee under the lease executed on or about the 1st of April 1896, up to the time of such accounting; further, for "an order appointing a receiver for The Belleville & Southern Illinois Railroad Company, with the usual powers of such receivers; and that the Illinois Central Railroad Company, through its officers and agents, to be ordered to surrender and deliver to said receiver all the corporate assets, books, papers and everything that rightfully belongs to The Belleville & Southern Illinois Railroad Company, and that the Illinois Central Railroad Company be ordered to account to such receiver, as is hereinbefore prayed. That the defendant, the Illinois Central Railroad Company, its officers and agents, be restrained from further violating the rights of your orator, and be ordered, directed

and restrained in particular from interfering in any way with said receiver, or with the operation of said Belleville Company as an independent and separate railroad company; and for such other and further relief as the equity of the case may require."

Process in the case against the Illinois Company was served upon its ticket agent at East St. Louis, "there being no President, Vice President, Secretary or Treasurer of that Company found" in the District; and against the Belleville and Terre Haute Companies, upon a director of each company, at Pinkneyville, Illinois, there being no President, Vice President, Secretary or Treasurer of either of those companies found in the District.

The Belleville Company pleaded—especially appearing under protest for the purposes of its plea and no other—that the court below was without jurisdiction to proceed against it, in that the defendant was an inhabitant of the Northern Division of the Northern District of Illinois, having its residence in that Division and District at Chicago, where its corporate meetings were held and its corporate business transacted.

Similar pleas were filed by the Terre Haute Company and the Illinois Central Railroad Company, each specially appearing under protest for the purpose only of denying the jurisdiction of the court below and each company claiming to be an inhabitant and resident of the Northern District of Illinois.

By its final order the court sustained the pleas to the jurisdiction, and dismissed the suit.

This case is here upon a certificate as to the jurisdiction of the Circuit Court.

The Eastern District of Illinois was created by the act of Congress approved March 3d 1905, *c.* 1427. 33 *Stat.* 992, 995. The present suit in equity was, as we have stated, instituted in the Circuit Court for that District, but its jurisdiction was denied by the judgment below upon the ground solely that each defendant railroad corporation was shown to be an inhabitant of the Northern District of Illinois, not of the Eastern District, and, therefore, this suit was not local to the latter District.

By the eighth section of the act of March 3d 1875, determining the jurisdiction of the Circuit Courts of the United States, it was provided: "That when in any suit, commenced in any circuit court of the United States, to enforce any legal or equitable lien upon, or claim to, or to *remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought*, one or more of the defendants therein shall not be an inhabitant of, or found within, the said district, or shall not voluntarily appear thereto, it shall be lawful for the

court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur, by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks; and in case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order, and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district," etc. 18 *Stat.* 470, 472, *c.* 137.

These provisions were substantially those embodied in § 738 of the Revised Statutes, except that the act of 1875 embraced (as § 738 did not) suits in equity "to remove any encumbrance or lien or cloud upon the title to real or personal property." Both section 738 and the act of 1875 related to legal and equitable liens or claims on real and personal property *within the district where the suit was brought.*

The repealing clause of the Judiciary Act of 1887–8 did not reach the 8th section of the act of 1875. That section is still in force, as was expressly held in *Jellenik* v. *Huron Copper Mining Co.*, 177 *U. S.* 1, 10.

We are then to inquire as to the scope of the eighth section of the above act of 1875. And that inquiry involves the question whether this suit is one "to enforce any legal or equitable lien upon, or claim to, or to remove any encumbrance or lien or cloud upon the title, to real or personal property" within the Eastern District of Illinois where the suit was brought.

In *Mellen* v. *Moline Malleable Iron Works*, 131 *U. S.* 352, we had occasion to examine the provisions of the act of 1875. A question there arose as to the jurisdiction of a Circuit Court of the United States to render a decree annulling a trust deed and chattel mortgage covering property within the district where the suit was brought, in which suit the defendants did not appear, but were proceeded against in the mode authorized by the above act of 1875. This court said: "The previous statute gave the above remedy only in suits 'to enforce any legal or equitable lien or claim against real or personal property within the district where the suit is brought,'

while the act of 1875 gives it also in suits brought 'to remove any incumbrance or lien or cloud upon the title to' such property. *Rev. Stat.* § 738; 18 *Stat.* 472, *c.* 137, § 8. We are of opinion that the suit instituted by the Furnace Company against the Iron Works and others belonged to the class of suits last described. *The trust deed and chattel mortgage in question embraced specific property within the district in which the suit was brought.* The Furnace Company, in behalf of itself and other creditors of the Iron Works, claimed an interest in such property as constituting a trust fund for the payment of the debts of the latter, and the right to have it subjected to the payment of their demands. In *Graham* v. *Railroad Company*, 102 *U. S.* 148, 161, this court said that 'when a corporation became insolvent, it is so far civilly dead, that its property may be administered as a trust fund for the benefit of the stockholders and creditors. A court of equity, at the instance of the proper parties, will then make those funds trust funds, which, in other circumstances, are as much the absolute property of the corporation as any man's property is his.' See also *Mumma* v. *Potomac Company*, 8 *Pet.* 281, 286; *County of Morgan* v. *Allen*, 103 *U. S.* 498, 509; *Wabash &c. Railway* v. *Ham*, 114 *U. S.* 587, 594; 2 *Story's Eq. Jur.* § 1252; 1 *Perry on Trusts*, § 242. The trust deed and chattel mortgage executed by the Iron Works created a lien upon the property, in favor of Wheeler, Carson, Hill, and the Keator Lumber Company, superior to all other creditors. The Furnace Company, in behalf of itself and other unsecured creditors, as well as Wheelock, denied the validity of Hill's lien as against them. That lien was therefore an incumbrance or cloud upon the title, to their prejudice. Until such lien or incumbrance was removed, they could not know the extent of their interest in the property or in the proceeds of its sale. The case made by the original, as well as cross-suit, seems to be within both the letter and the spirit of the act of 1875."

A recent case is that of *Jellinik* v. *Huron Copper Mining Co.*, *Ib.* That was a suit by stockholders of a Michigan corporation. Its object, as the bill disclosed, was to remove the cloud that had come upon their title to the shares of stock held by them. The issues in the case made it necessary to determine the scope of the above act of 1875, *c.* 137. This court said: "Prior to the passage of the above act of March 3, 1875, the authority of a Circuit Court of the United States to make an order directing a defendant—who was not an inhabitant of nor found within the district and who did not voluntarily appear—to appear, plead, answer or demur, was restricted to suits in equity brought to enforce legal or equitable liens or claims against real or personal property within the district. *Rev. Stat.* § 738. But that act extended the authority of the court to a suit brought 'to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought.' One

of the objects of the present suit was to remove an incumbrance or cloud upon the title to certain shares of the stock of a Michigan corporation. No question is made as to the jurisdiction of the court so far as it rests upon the diverse citizenship of the parties. The plaintiffs alleged that they were the equitable owners of that stock, although the legal title was in certain of the defendants. The relief asked was a decree establishing their rightful title and ownership; and in order that such a decree might be obtained the defendants referred to were ordered to appear, plead, answer or demur; but as they refused to do so, the Circuit Court decided that it could not proceed further. That court was of opinion that 'the shares of stock in question are not personal property within the district within the purview of the statute of the United States authorizing the bringing in by publication of notice to non-resident defendants who assert some right or claim to the property which is the subject of suit.' 82 *Fed. Rep.* 778, 779. The proper forum, the court said, for the litigation of the question involved would be in the State of which the defendants were citizens. The question to be determined on this appeal is, whether the stock in question is personal property within the district in which the suit was brought. If it is, then the case is embraced by the act of 1875, c. 137, and the Circuit Court erred in dismissing the bill." Again: "It is sufficient for this case to say that the State under whose laws the Company came into existence has declared, as it lawfully might, that such stock is to be deemed personal property. That is a rule which the Circuit Court of the United States sitting in Michigan should enforce as part of the law of the State in respect of corporations created by it. The stock held by the defendants residing outside of Michigan who refused to submit themselves to the jurisdiction of the Circuit Court being regarded as personal property, the act of 1875 must be held to embrace the present case, if the stock in question is 'within the district' in which the suit was brought. Whether the stock is in Michigan, so as to authorize that State to subject it to taxation as against individual shareholders domiciled in another State, is a question not presented in this case, and we express no opinion upon it. But we are of opinion that it is within Michigan for the purposes of a suit brought there against the Company—such shareholders being made parties to the suit—to determine whether the stock is rightfully held by them. The certificates are only evidence of the ownership of the shares, and the interest represented by the shares is held by the Company for the benefit of the true owner. As the habitation or domicil of the Company is and must be in the State that created it, the property represented by its certificates of stock may be deemed to be held by the Company within the State whose creature it is, whenever it is sought by suit to determine who is its real owner. This principle is not affected by

the fact that the defendant is authorized by the laws of Michigan to have an office in another State, at which a book showing the transfers of stock may be kept." See also, *Dick* v. *Foraker*, 155 *U. S.* 404.

These decisions, we think, make it clear that this suit comes within the act of 1875, as one to remove an incumbrance or cloud upon the title to real property within the Eastern District of Illinois. The railroad in question *is wholly within that district*, although the defendant corporations, including the Belleville Company, may hold their annual or other meetings in Chicago. The bill seeks the cancellation of the deeds and leases under and by authority of which the properties of the Belleville Company are held and managed in the interest, as is alleged, of the Illinois Central Railroad Company, and to the destruction of the rights of the stockholders of the Belleville Company. The bill also, as we have seen, prays for the appointment of a receiver of the Belleville Company and the surrender and delivery to such receiver of all its corporate assets, books, papers and everything that rightfully belongs to it, and account to such receiver, as prayed; also, that the Illinois Central Railroad Company be restrained from interfering in any way with the receiver, or with the operation of the Belleville railroad as an independent, separate company. In addition, there is a prayer in the bill for general relief. If the deeds and leases in question are adjudged to be void, the entire situation, as to the possession and control of the Belleville railroad properties, will be changed, and the alleged incumbrances upon the properties of the Belleville Company will be removed. We express no opinion upon the question whether, upon its own showing, or in the event the allegations of the bill are sustained by proof, the plaintiff is entitled to a decree giving the relief asked by it. There was no demurrer to the bill as being insufficient in equity. The only inquiry now is whether, looking at the allegations of the bill, the suit is of such a nature as to bring it within the act of 1875, *as one to remove incumbrances or clouds upon real or personal property within the district where the suit was brought, and, therefore, one local to such district.* The court below held that the suit was not one which could be brought and maintained against the defendant corporations found to be inhabitants of another district and not voluntarily appearing in the suit; and this, notwithstanding the railroad in question is wholly within the district where the suit was brought. 18 *Stat.* 472; 25 *Stat.* 436. If the suit was within the terms of the act of 1875, then the Circuit Court of the Eastern District of Illinois, although the defendant corporations may be inhabitants of another district in Illinois, could proceed to such an adjudication as the facts would justify, subject, of course, to the condition prescribed by the 8th section of that act, that any adjudication, affecting absent defendants without appearance, should affect only

such property, within the district as may be the subject of the suit and under the jurisdiction of the court.

The plaintiff contends that this condition was waived, and the general appearance of the defendants entered, when their counsel, at the hearing as to the sufficiency of the pleas to the jurisdiction, argued the merits of the case as disclosed by the bill. This is too harsh an interpretation of what occurred in the court below. There was no motion for the dismissal of the bill for want of equity. The discussion of the merits was permitted or invited by the court in order that it might be informed on that question in the event it concluded to consider the merits along with the question of the sufficiency of the pleas to the jurisdiction. We are satisfied that the defendants did not intend to waive the benefit of their qualified appearance at the time of filing the pleas to the jurisdiction.

We adjudge that the suit is of such a nature as to bring it within the jurisdiction of the Circuit Court for the Eastern District, under the act of 1875. The judgment must, therefore, be reversed and the cause remanded that the plaintiff may proceed, as it may be advised, with the preparation of its case under the act of 1875.

It is so ordered.

True copy.

Test:

Clerk Supreme Court, U. S.